

No.

8124

United States
Circuit Court of Appeals
For the Ninth Circuit.

PETER CONNLEY and HERMAN F. QUIRIN,
Appellants,
vs.
THE UNITED STATES OF AMERICA,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern
District of California, Central Division.

FILED

JUN - 2 1930

PAUL P. O'BRIEN,
CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italics* the two words between which the omission seems to occur.]

	PAGE
Amended Arraignment of Errors	270
Assignment of Errors	266
Bill of Exceptions	41
Testimony on Behalf of Plaintiff:	
Alles, John, Direct Examination	74
Amsbow, Fred C., Direct Examination.....	146
Barber, A. G., Direct Examination.....	108
Cross-Examination	115
Clements, William P., Direct Examination	58
Cross-Examination	65
Redirect Examination	73
Recross-Examination	73
Funk, Ed., Direct Examination	163
Cross-Examination	164
Redirect Examination	165
Recross-Examination	165
Godfrey, Roland A., Direct Examination	180
Cross-Examination	180
Hotchkiss, N. S., Direct Examination	168
Cross-Examination	173
Redirect Examination	173
Recross-Examination	174
Hudson, Charlie, Direct Examination	181
Cross-Examination	182
Redirect Examination	182
Kelly, Richard, Direct Examination	81
Kruse, Albert, Direct Examination	182
Cross-Examination	188

Kruse, Charles, Direct Examination	191
Cross-Examination	192
Mathews, L. L., Direct Examination.....	167
Cross-Examination	167
Noe, Thomas W., Direct Examination	194
Cross-Examination	195
Ranney, Fred R., Direct Examination	175
Spencer, O. G. Direct Examination	43
Cross-Examination (Recalled)	55
Direct Examination	57
Cross-Examination	57
Thompson, Russell F., Direct Examination.....	137
Cross-Examination	145
Redirect Examination	145
Recross-Examination	145
Valero, Perfecto, Direct Examination	178
Wagoner, H. S., Direct Examination	165
Testimony on Behalf of Defendant:	
Bruno, Nick, Direct Examination	211
Cross-Examination	219
Redirect Examination	225
Verda, Joe, Direct Examination	198
Cross-Examination	203
Bond of Peter Connley for Costs.....	281
Bond of Herman F. Quirin for Costs.....	284
Bonds Pending Decision on Appeal.....	287
Citation	2
Indictment	3
Judgments and Sentences	38
Memorandum of Costs and Disbursements.....	279
Minutes of the Court—March 3, 1930, to March 26, 1930	12

	PAGE
Minutes of the Court—March 31, 1930—Order that cause be continued to April 2, 1930 for sentence of certain defendants	37
Order Allowing Appeal and Fixing Bond.....	264
Order Approving Bill of Exceptions	262
Order of Court re Certification of Original Exhibits to Circuit Court of Appeals.....	278
Petition for Appeal	263
Pleas	11
Praecipe for Record	295
Stipulation re Certification of Exhibits to Circuit Court of Appeals	276
Verdicts	35

Names and Addresses of Attorneys.

For Appellants:

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For Appellee:

SAMUEL W. McNABB, Esq.,

United States Attorney;

J. GEORGE OHANNESIAN, Esq.,

Assistant United States Attorney,

Federal Building, Los Angeles, California.

United States of America, ss.

To THE UNITED STATES OF AMERICA, and to SAMUEL W. McNABB, United States Attorney for the Southern District of California, and J. GEORGE OHANNESIAN, Assistant United States Attorney: Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 3rd day of May, A. D. 1930, pursuant to an Order Allowing Appeal, filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action No. 9926-M Crim., wherein Peter Connley and Herman F. Quirin are the defendants and appellants and you are the plaintiff and appellee to show cause, if any there be, why the Judgment and Sentence in the said action mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN M. KILLITS
United States District Judge for the Southern
District of California, this 4th day of April,
A. D. 1930, and of the Independence of the
United States, the one hundred and fifty-fourth.

John M. Killits

U. S. District Judge for the Southern District
of California.

[Endorsed]: 9926-M. Cr. In the United States Circuit Court of Appeals for the Ninth Circuit Peter Connley and Herman F. Quirin vs. United States of America Citation Received this 4th day of April, 1930. E. E. Doherty, Asst. U. S. Attorney. Filed Apr. 4, 1930. R. S. Zimmerman, Clerk by W. E. Gridley, Deputy Clerk.

No.....

Filed.....

Viol: Section 37 Federal Penal Code—Conspiracy to violate Section 3, Title II of the National Prohibition Act of October 28, 1919 and Sections 3258, 3281 and 3282 United States Revised Statutes, and Section 3, Title II of the National Prohibition Act of October 28, 1919 as amended March 2nd, 1929.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION.

At a stated term of said court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Central Division of the Southern District of California on the first Monday of February in the year of our Lord one thousand nine hundred thirty:

The grand jurors for the United States of America, impaneled and sworn in the Central Division of the Southern District of California, upon their oath present:

That

NICK BRUNO,
JOE VERDA,
PETER CONNLEY, alias George Walker,
HERMAN F. QUIRIN,

hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the grand jurors unknown, each late of the Central Division of the Southern District of California, heretofore, to-wit: continuously throughout the period of time from on or about the 1st day of July,

A. D. 1929, and thereafter, to and including the date of finding and presentation of this indictment, in the County of Riverside, in the state and district aforesaid and in the Central Division of said district, and within the jurisdiction of the United States and of this Honorable Court, did then and there knowingly, wilfully, unlawfully, corruptly and feloniously conspire, combine, confederate, arrange and agree together and with each other and with divers other persons whose names are to the grand jurors unknown, to commit in the County of Riverside, State of California, within the jurisdiction of the United States and of this Honorable Court, an offense against the United States of America and the laws thereof, the offense being to violate Title II of an Act of Congress of the United States approved October 28th, 1919, commonly known and designated as the National Prohibition Act, that is to say that they, the said defendants, would thereupon unlawfully, and in violation of Section 3, Title II of said Act, manufacture, transport and possess large quantities of intoxicating liquor, all of which should then and there be fit and for use for beverage purposes and all of which should contain more than one-half of one per cent of alcohol by volume, neither of said defendants then and there having, nor intending thereafter to have, a permit from the Commissioner of Internal Revenue of the United States so to do.

And the grand jurors aforesaid, upon their oath aforesaid, do further charge and present that at the hereinafter stated times, in pursuance of, and in furtherance of, in execution of, and for the purpose of carrying out and to effect the object, design and purposes of said conspiracy, combination, confederation and agreement aforesaid, the

hereinafter named defendants did commit the following overt acts at the hereinafter stated places:

1. On or about the 1st day of September, 1929, at the town of Elsinore, County of Riverside, in state and district aforesaid, and in the Central Division of said district, the defendant Herman F. Quirin purchased certain lumber from the Dill Lumber Company.

2. Between the 1st day of July 1929 and the 21st day of January 1930, all of the defendants named herein maintained and operated a certain still situated on the ranch of Nick Bruno, about five miles northeast of Elsinore, County of Riverside, in the state, division and district aforesaid.

3. On or about the 21st day of January 1930, all of the defendants named herein did possess about thirteen hundred (1300) gallons of alcohol at the said ranch of Nick Bruno, located about five miles northeast of the town of Elsinore, County of Riverside, in the state, division and district aforesaid.

4. On or about the 21st day of January 1930, at the town of Elsinore, County of Riverside, in the state, division and district aforesaid, the defendant Herman F. Quirin purchased certain lumber from the Dill Lumber Company.

5. On or about the 21st day of January 1930, the defendant Joe Verda was present at the said ranch of Nick Bruno, located about five miles northeast of Elsinore, County of Riverside, in the state, division and district aforesaid.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That

NICK BRUNO,
JOE VERDA,
PETER CONNLEY, alias George Walker,
HERMAN F. QUIRIN,

hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the grand jurors unknown, each late of the Central Division of the Southern District of California, heretofore, to-wit: on or about the 20th day of January A. D. 1930, at the ranch of Nick Bruno, located about five miles northeast of the town of Elsinore, County of Riverside, in the state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully, unlawfully and feloniously manufacture for beverage purposes about thirteen hundred (1300) gallons of intoxicating liquor, the exact amount being to the grand jurors unknown, then and there containing alcohol in excess of one-half of one percent by volume, in violation of Section 3, Title II of the National Prohibition Act of October 28th, 1919, as amended March 2nd, 1929;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

THAT

NICK BRUNO,

JOE VERDA,

PETER CONNLEY, alias George Walker,

HERMAN F. QUIRIN,

hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the grand jurors unknown, each late of the Central Division of the Southern District of California, heretofore—to-wit: on or about the 21st day of January A. D. 1930, at the ranch of Nick Bruno, located about five miles northeast of the town of Elsinore, County of Riverside, in the state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully, unlawfully and feloniously have in their possession and custody and under their control, one still and distilling apparatus set up at or near the said ranch of Nick Bruno, the legal description of which is as follows, to-wit:

The West 5 acres of Lot 2, the whole of Lot 3, the East 5 acres of Lot 4 of the Sunny Slope Division of Section 28, Township 5-S, Range 4-W, County of Riverside, State of California.

which said still and distilling apparatus had not been registered by the said defendants with the Collector of Internal Revenue for the Sixth Internal Revenue District of California, and the said defendants, at the time they did so knowingly, wilfully, unlawfully and feloniously have in their possession and custody and under their control the said still and distilling apparatus, then and there well knew that the said still and distilling apparatus had not been

registered with the said Collector of Internal Revenue as required by law;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That

NICK BRUNO,
JOE VERDA,
PETER CONNLEY, alias George Walker,
HERMAN F. QUIRIN,

hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the grand jurors unknown, each late of the Central Division of the Southern District of California, heretofore, to-wit: on or about the 21st day of January A. D. 1930, at the ranch of Nick Bruno, located about five miles northeast of the town of Elsinore, County of Riverside, in the state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully, unlawfully and feloniously engage in and carry on the business of distillers without having given bond, as required by law, with the intent on the part of them, the said defendants, to defraud the United States of America of the tax on the spirits distilled by them, the said defendants, in violation of Section 3281 United States Revised Statutes;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That

NICK BRUNO,
JOE VERDA,
PETER CONNLEY, alias George Walker,
HERMAN F. QUIRIN,

hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the grand jurors unknown, each late of the Central Division of the Southern District of California, heretofore, to-wit: on or about the 21st day of January A. D. 1930, in the County of Riverside, in the state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully, unlawfully and feloniously make and ferment on certain premises other than a distillery, and in a certain building other than a distillery duly authorized accordingly to law, to-wit: on the ranch of Nick Bruno, the legal description of which is as follows, to-wit:

The West 5 acres of Lot 2, the whole of Lot 3, the East 5 acres of Lot 4 of the Sunny Slope Division of Section 28, Township 5-S, Range 4-W, County of Riverside, State of California;

about fifty thousand (50,000) gallons of mash, which said mash was then and there fit for distillation and for the production of spirits, and which said mash was not then

and there intended to be used in the manufacture of vinegar exclusively or at all; in violation of Section 3282 United States Revised Statutes;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SIXTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That

NICK BRUNO,
JOE VERDA,
PETER CONNLEY, alias George Walker,
HERMAN F. QUIRIN,

hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the grand jurors unknown, each late of the Central Division of the Southern District of California, heretofore, to-wit: on or about the 21st day of January A. D. 1930, at the ranch of Nick Bruno, located about five miles northeast of the town of Elsinore, County of Riverside, in the state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully and unlawfully have in their possession about thirteen hundred (1300) gallons of intoxicating liquor, then and there containing alcohol in excess of one-half of one per cent by volume, for beverage purposes; in violation of Section 3, Title II, of the National Prohibition Act of October 28, 1919;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SAMUEL W. McNABB

United States Attorney.

Gwyn S Redwine

Assistant United States Attorney.

[Endorsed]: No. 9926M United States District Court Southern District of California Central Division The United States of America vs. Nick Bruno, et al Indictment Vio: Sec. 37 F. P. C.—Conspiracy to violate Sec. 3, Title II NPA. and Secs. 3258, 3281 and 3282 R. S. and Sec. 3, Title II, NPA. as amended March 2nd, 1929. A true bill, C. M. Staub Foreman. Filed Feb 14 1930 R. S. Zimmerman, Clerk By Louis J. Somers Deputy Clerk Bail, \$5000 ea.

At a stated term, to wit: The February Term, A. D. 1930, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 3rd day of March in the year of our Lord one thousand nine hundred and thirty

Present:

The Honorable John M. Killits, District Judge Pro Tem.

United States of America, Plaintiff,)	
vs.)	
Nick Bruno,)	
Joe Verda,	)	No. 9926-M Crim.
Peter Connley, alias George Walker,)	
Herman F. Quirin,)	
Defendants.)	

This cause coming before the Court for the arraignment and plea of the defendants; Gwyn Redwine, Assistant United States Attorney, appearing as counsel for the Gov-

ernment; the defendants being present with their attorney Russell Graham, Esq., state their true names to be Nick Bruno, Joe Verda, Peter Connley and Herman F. Quirin, and waive reading of the Indictment, whereupon each defendant enters his separate plea of not guilty, and it is ordered that this cause be set for March 18th, 1930 for trial of all four defendants.

At a stated term, to wit: The February Term, A. D. 1930 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 18th day of March in the year of our Lord one thousand nine hundred and thirty.

Present:

The Honorable John M. Killits, District Judge Pro Tem.

United States of America, Plaintiff,)	
)	
vs.)	
Nick Bruno,)	
Joe Verda,	)	No. 9926-M. Crim.
Peter Connley, alias George Walker)	
Herman F. Quirin,)	
)	
Defendants.)	

This cause coming before the Court for trial of all four defendants, J. Geo. Ohannesian, Asst. U. S. Attorney, appearing as counsel for the Government, defendants Nick Bruno and Joe Verda being present, and all other defendants being absent; Mark L. Herron, Esq. appearing as counsel for defendant Bruno and Russell Graham, Esq.

appearing as counsel for all other defendants, it is ordered that the case be continued to the hour of 2 o'clock p. m.; and witnesses are instructed to appear at said time.

At the hour of 2:25 o'clock p. m. court reconvenes, counsel being present as before and all four defendants being now present, and C. W. McClain being present as official stenographic reporter of the testimony and the proceedings; upon motion of Russell Graham, Esq., said attorney is allowed to withdraw as counsel for defendants Connley and Quirin; whereupon Attorney Clarence L. Belt, being present, states that he represents said defendants, and moves for continuance. Mark L. Herron, Esq., moves to associate Attorney Raymond Hodge for defendant Bruno, and the Court having so ordered; all witnesses herein are excused, at the hour of 2:33 o'clock p. m., until tomorrow, 10 a. m., and thereupon they having left the court room, Attorney Graham, on behalf of defendant Verda, and also for all other defendants, moves that the Government be required to elect whether it will proceed on the second or fifth count; and said motion having been denied by the Court, with exception noted for the defendants; the Court orders, at the hour of 2:35 o'clock p. m., that a jury be impanelled herein, and thereupon the following twelve names are drawn from the jury box: Robert H. Moulton, Young Wilhoite, L. W. Still, Carleton F. Burke, Edward Lawless, A. J. Hosking, Elmer E. Bailey, Louis H. Bromme, David W. Green, Kenyon L. Reynolds, R. A. Mays and Cecil J. Walden; and the said jurors whose names were drawn are called and examined by the Court; whereupon Edward Lawless is excused on peremptory challenge exercised by defendants, and one more name is drawn from the jury box, being the name L. Revel Miller, who

is called and examined for cause by the Court, and who is thereupon excused on peremptory challenge by the Government.

The name Henry Klein is now drawn from the jury box, and the said Henry Klein, having thereupon been called and examined for cause by the Court, David W. Green is excused on peremptory challenge by defendants, and it is ordered that one more name be drawn from the jury box.

The name Orman R. Goode is now drawn, and the said juror is called examined and excused for cause by the Court; whereupon the name Charles C. Stanley is drawn from the jury box, and the said Charles C. Stanley is called and examined for cause by the Court.

Henry Klein is now excused on peremptory challenge made by the Government, and it is ordered that one more name be drawn from the jury box, and a name is drawn, being that of John P. Whitmore.

John P. Whitmore is called and examined for cause by the Court and is excused on peremptory challenge by defendants; whereupon, the Court having ordered that another name be drawn, the name Harry P. Ball is drawn, and said juror is called and examined by the Court for cause; and thereafter Elmer E. Bailey having been excused on peremptory challenge by defendants, and the Court having ordered that another name be drawn, the name Fred W. Patten is drawn, and the said Fred W. Patten is called and examined for cause by the Court.

Kenyon L. Reynolds is excused on peremptory challenge by counsel for the Government, and one more name is drawn from the jury box, being the name Will J. Hess, and the said juror is called and is examined for cause by

counsel for the defendants, whereupon R. A. Mays is excused on peremptory challenge made by defendants.

The name G. R. Erdman is now drawn from the jury box, and said juror is called and examined for cause by the Court, whereupon Harry P. Ball is excused on peremptory challenge exercised by defendants, and by order of the Court, one more name is drawn from the jury box, being the name F. M. Goss; and the said F. M. Goss having thereupon been called and having been examined for cause by the Court,

G. R. Erdman is excused on peremptory challenge by defendants, and it is ordered that one more name be drawn from the jury box. The name Jno. M. Pickarts is drawn from the jury box, and said juror is called and examined for cause by the Court, whereupon Will. J. Hess, is excused by the defendants on peremptory challenge, and the name C. G. Columbus is drawn; and the said C. G. Columbus having been called and having been examined and passed for cause by the Court; the jurors now in the jury box are accepted, and at the hour of 3:10 o'clock p. m., are sworn in a body as the jury to try this cause, the names of those so sworn being as follows, to-wit:

THE JURY:

Robert H. Moulton	Fred W. Patten
Young Wilhoite	Louis H. Bromme
L. W. Still	Chas. C. Stanley
Carleton F. Burke	C. G. Columbus
F. M. Goss	Jno. M. Pickarts
A. J. Hosking	Cecil J. Walden

The Court admonishes the jury that during the progress of this trial they are not to speak to anyone about this cause, or any matter or thing therewith connected; that until said cause is finally submitted to them for their deliberation under the instruction of the Court, they are not to speak to each other about this cause, or any matter or thing therewith connected, or form or express any opinion concerning the merits of the trial until it is finally submitted to them, and declares a recess until the hour of 10 o'clock a. m., tomorrow.

At a stated term, to wit: The February Term, A. D. 1930 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 19th day of March in the year of our Lord one thousand nine hundred and thirty.

The Honorable John M. Killits, District Judge Pro Tem.

United States of America, Plaintiff,)	
vs.)	
Nick Bruno, Joe Verda,	)	No. 9926-M Crim.
Peter Connley alias George Walker,)	
Herman F. Quirin,)	
Defendants.)	

This cause coming before the Court for trial of all four defendants, J. Geo. Ohannesian and Emmett E. Doherty, Assistant U. S. Attorneys, appearing as counsel for the Government; Mark L. Herron, Esq. appearing as counsel for defendant Bruno, Russel Graham, Esq. appearing for defendant Verda and Clarence L. Belt, Esq., appearing as counsel for defendants Connley and Quirin; the de-

defendants and the jury being present; and Ross Reynolds, C. W. McClain and Ray E. Woodhouse being present as official stenographic reporters of the testimony and the proceedings, and alternating in said capacity; now, upon motion of Russell Graham, Esq., it is by the Court ordered that any objection taken on behalf of one defendant may be deemed as taken in behalf of all defendants, and that exception taken on behalf of one may be deemed as taken in behalf of all; whereupon the whole Indictment is read by the Clerk to the jury, at the request of J. Geo. Ohannesian, Esq., and thereafter, on motion of Russell Graham, Esq., all witnesses are excluded from the court room until individually called to testify excepting defendants on trial and Government, city or state officers aiding the Government.

O. G. Spencer is called and sworn and testifies for the Government on direct examination conducted by J. Geo. Ohannesian, Esq., and the following exhibits are offered and admitted in evidence for the Government, to-wit:

- Government's Ex. No. 1: Pencil sketch of premises
- “ “ “ 2: Panoramic view of premises
- “ “ “ 3: “ “ “ “

whereupon said witness is cross-examined by Mark L. Herron, Esq., and the following exhibits are thereafter offered and admitted in evidence for the Government, to-wit:

- Government's Ex. No. 4: Picture of stack of hay
- “ “ “ 5: “ “ “ “ “
- “ “ “ 6: “ “ “ “ “
- “ “ “ 7: “ “ “ “ “
- “ “ “ 8: “ “ “ “ “

“	“	“ 9:	“	“	two vats
“	“	“ 10:	“	“	boiler
“	“	“ 11:	“	“	machine room and four men
“	“	“ 12:	“	“	top part of boiler
“	“	“ 13:	“	“	pipes and valves, etc.

Witness Spencer is withdrawn temporarily, and right is reserved to further cross-examine said witness.

At the hour of 11:16 o'clock a. m., a recess is declared for five minutes, and at the hour of 11.25 o'clock a. m., court reconvenes, and all being present as before

Wm. P. Clements is called and sworn and testifies for the Government on direct examination conducted by Attorney Ohannesian, and is examined by the Court; whereupon said witness testifies on cross-examination conducted by Russell Graham, Esq., and the following exhibit is offered and admitted in evidence for the defendants, to-wit:

Defendants' Ex. A: Panoramic photograph

At the hour of 12 o'clock, Noon, the Court admonishes the jury, and declares a recess until the hour of 2 o'clock p. m., and at the hour of 2:05 o'clock p. m., court reconvenes, and all being present as before, Wm. P. Clements resumes the stand and is further cross-examined by Attorney Graham, and the following exhibits are offered and admitted in evidence for the defendants, to-wit:

Defendants' Ex. B: Panoramic photograph

“	“	C:	“	“
“	“	D:	“	“
“	“	E:	“	“

whereupon said witness is cross-examined by Clarence L. Belt, Esq., and thereafter having testified on redirect examination conducted by Attorney Ohannesian and having been examined by the Court, and recross-examined by Attorney Belt, the following Government's exhibit is offered and admitted in evidence, to-wit:

Government's Ex. No. 14: Rotor—part of automobile distributor.

John Alles is called and sworn and testifies for the Government on direct examination conducted by Attorney Ohannesian, and at the hour of 3:10 o'clock p. m., a recess is declared for ten minutes. At the hour of 3:25 o'clock p. m., court reconvenes, and at this time witness Alles having been withdrawn temporarily,

Richard Kelly is called and sworn and testifies for the Government on direct examination conducted by Attorney Ohannesian, and is not cross-examined.

John Alles is recalled, and is not required to testify at this time, and having left the stand,

Wm. P. Clements is recalled and testifies further on direct examination conducted by Attorney Ohannesian, and is examined by the Court, and is cross-examined by Attorney Graham; whereupon said witness testifies on redirect examination conducted by Attorney Ohannesian, and is again examined by the Court, and there having been no further cross-examination of said witness at this time,

John Alles, heretofore sworn, resumes the stand and testifies further on direct examination conducted by J. Geo. Ohannesian, Esq., and is not cross-examined, whereupon the following exhibit is offered and admitted in evidence for the Government, to-wit:

Government's Ex. No. 15: Large copper column (part of still, resembling a boiler)

A. G. Barber is called and sworn and testifies for the Government on direct examination conducted by J. Geo. Ohannesian, Esq., and the following exhibits are offered and admitted in evidence for the Government, to-wit:

Government's Ex. No. 16: Two tins of mash

“ “ “ 17: Two “ “ alcohol

At the hour of 4:33 o'clock p. m., the Court admonishes the jury and declares a recess until the hour of 10 o'clock a. m., tomorrow.

At a stated term, to wit: The February Term, A. D. 1930 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 20th day of March in the year of our Lord one thousand nine hundred and thirty.

Present:

The Honorable John M. Killits, District Judge Pro Tem.

United States of America, Plaintiff,)	
)	
vs.)	
	)	No. 9926-M Crim.
Nick Bruno, Joe Verda,)	
Peter Connley alias George Walker,)	
Herman F. Quirin, Defendants.)	

This cause coming before the Court for further trial of all four defendants, J. Geo. Ohannesian, Assistant U. S. Attorney, appearing; the defendants being present; Mark L. Herron, Esq., appearing for defendant Bruno; Russell

Graham, Esq. appearing for defendant Verda and Clarence L. Belt, Esq. appearing for defendants Connley and Quirin; Ray Woodhouse being present as official stenographic reporter of the testimony and the proceedings, a statement is made by Attorney Ohannesian re stipulation regarding procuring permit re possession of intoxicating liquor and counsel so stipulate, and it is stipulated that still on Bruno ranch was not registered with the Collector of Internal Revenue.

A. G. Barber, heretofore sworn, resumes the stand and testifies further on direct examination conducted by Mr. Ohannesian, and said attorney suggests that a visit be made to the still and premises. The Court thereupon orders that the jury leave the court room, and the jury having retired, the Court addresses remarks to counsel re proposed viewing of premises; and the Court now having directed that a view of the premises be had, invites defendants to accompany the court and jury and its officers to view said premises. The jury are now called into the court room, and all appearing as before, the Court instructs the jury as to their conduct as they view the premises, and it is ordered that the jury and bailiff in charge have their noonday lunch at the expense of the United States, and that the expenses of the trip be defrayed by the United States Marshal. Witnesses for the Government are instructed to return to court tomorrow at the hour of 10 o'clock a. m., and Mr. Powell, a witness, is excused subject to call, whereupon an informal recess is declared until arrival at the premises to be viewed.

At the hour of 2 o'clock p. m., all being present at the premises in question, certain points of interest are pointed out by defendants' counsel and counsel for the Govern-

ment. Witness Spencer answers questions propounded by the Court, and other witnesses who heretofore testified in this case make statements of facts.

At the hour of 5 o'clock p. m., court adjourns, to meet in the court room at Los Angeles, at the hour of 10 o'clock a. m., March 21st, 1930.

At a stated term, to wit: the February Term, A. D. 1930 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 21st day of March in the year of our Lord one thousand nine hundred and thirty.

Present:

The Honorable John M. Killits, District Judge Pro Tem.

United States of America, Plaintiff,)
 vs.)
Nick Bruno, Joe Verda,) No. 9926-M Crim.
Peter Connley alias George Walker,)
Herman F. Quirin,)
 Defendants.)

This cause coming before the Court for further trial of all four defendants; J. Geo. Ohannesian and E. E. Doherty, Assistant United States Attorneys, appearing as counsel for the Government; the defendants being all present and their counsel appearing as before; the jury being present and stenographic reporters C. W. McClain, Woodhouse and Hossack being present, all witnesses are instructed to leave the court room until called to testify, and thereupon the following exhibit is offered and admitted in evidence for the Government, to-wit:

U. S. Ex. No. 18, for Ident: Photostatic copy of bill of lading of Thompson Boiler Works, No. 10307 to Kelly Boiler Works 1/8/30.

Russell F. Thompson is called and sworn and testifies for the Government under examination conducted by Mr. Ohannesian, and is questioned by the Court, and having been further questioned by Mr. Ohannesian, U. S. Exhibit No. 18, for identification, is offered, received and marked in evidence, whereupon said witness is cross-examined by Mr. Belt, and testifies on redirect examination under questioning conducted by Mr. Ohannesian, and having been further questioned by Mr. Belt, Mr. Thompson is recalled and is questioned by Mr. Herron.

Fred Amsbaw is called and sworn and testifies for the Government; whereupon at the request of Mr. Ohannesian the jury are temporarily excused, and retire from the court room, and said witness being still on the stand, J. Geo. Ohannesian, Esq. presents to the Court statement signed by witness and thereupon a statement is made by the Court; proceedings are objected to, and the objection is overruled; whereupon said paper is handed to the witness, who states that the statements thereon are true; and said witness having been further questioned by the Court and by Mr. Herron, the jury are brought into the court room, and all being present as before, witness Amsbaw, who is still on the witness stand, is questioned by the Court, over the objection of counsel for defendants Bruno and Verda, and is questioned by Mr. Ohannesian; whereupon Statement signed

Fred C. Amsbaw, before O. G. Spencer, Investigator, dated February 7, 1930 is marked in evidence, at the direction of the Court, and is marked "Special Exhibit".

Ed. Funk is called and sworn and testifies for the Government and is cross-examined by Attorney Heron and having thereupon testified on redirect examination conducted by Mr. ———.

H. S. Wagner is called and sworn and testifies for the Government and is not cross-examined.

L. L. Matthews is called and sworn and testifies for the Government and is cross-examined by Mr. Heron.

N. S. Hotchkiss is called and sworn and testifies for the Government, and the following exhibit is offered and admitted in evidence for the Government, to-wit:

U. S. Exhibit No. 19: Bill for lumber to H. F. Quirin 1/21/30, and a recess is declared to the hour of 2 o'clock p. m.

At the hour of 2 o'clock p. m., court reconvenes, and all being present as before, witness Hotchkiss resumes the stand and testifies further on direct examination, and the following exhibit is offered and admitted in evidence to-wit:

U. S. Ex. No. 20:	Tag	971	1/8/30
	"	796	12/20/29
	"	728	12/16/29
	"	719	12/14/29
	"	67	Oct. 11
	"	6959	Oct. 3, 1929
	"	6960	Oct. 3, 1929
	"	6910	9/30/29
	"	6909	Sept. 30, 1929

- “ 6884 Sept. 22, 1929
- “ 6868 9/25/29
- “ 6859 9/25/29
- “ 6858 9/25/29
- “ 6857 9/25/29
- “ 6823 9/23/29
- “ 6743 9/17/29
- “ 6625 9/7/29
- “ 620 12/5/29
- “ 606 12/4/29
- “ 577 12/3/29
- “ 541 11/29/29
- “ 385 Nov. 13, 1929

and witness is cross-examined by Mr. Graham, and testifies on redirect examination conducted by J. Geo. Ohannesian, Esq., and is cross-examined by Mr. Belt.

Fred R. Ranney is called and sworn and testifies for the Government, and the following exhibit is offered and admitted in evidence in connection with his testimony, to-wit:

U. S. Ex. No. 21: Day Book Pages.....by witness,
marked as U. S. Ex. 21

and the following exhibit is offered and marked for identification for the Government, to-wit:

U. S. Ex. No. 22, for Ident: “Tube expander”

Harriet Foster is sworn as interpreter, and thereupon

Perfecto Valera is called and sworn and testifies thru the interpreter aforesaid, and is not cross-examined, whereupon a recess is declared for a few minutes, and

Roland A. Godfrey is called and sworn and testifies for the Government and is cross-examined by Mr. Belt,

and at this time U. S. Exhibit No. 22, heretofore marked for identification, is offered, received and marked in evidence, and said witness is cross-examined by Mr. Herron, whereupon the Court admonishes the jury and declares a recess in this trial until next Tuesday, 10 a. m.

At the request of the Court counsel and defendants remain, and the Court makes a statement, as reflected by the reporter's transcript, and orders that the bonds of defendants Walker or Connley and Quirin be exonerated, and the said two defendants are remanded to custody of the United States Marshal; whereupon bail of defendant Connley is fixed at \$15,000 and bail of defendant Quirin is fixed at \$10,000. Bond of defendant Connley in the sum of \$5000 is exonerated. Upon motion of Attorney Belt, defendant Quirin is allowed to the hour of 11 o'clock a. m., tomorrow to furnish bond, on statement of Mr. Belt that he will be responsible for defendant's appearance.

At a stated term, to wit: The February Term, A. D. 1930 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 25th day of March in the year of our Lord one thousand nine hundred and thirty

Present:

The Honorable John M. Killits, District Judge Pro Tem.

United States of America, Plaintiff,)	
)	
vs.)	
)	
Nick Bruno,	)	No. 9926-M Crim.
Peter Connley alias George Walker,)	
Herman F. Quirin,)	
)	
)	
Defendants.)	

Court reconvenes, at the hour of 10 o'clock a. m., for further trial of this cause, counsel for the Government appearing as before; and Samuel W. McNabb, U. S. Attorney, also appearing all defendants and jurors being present, and stenographic reporters Ray Woodhouse, E. L. Hossack and Anderson being present; Mark L. Herron, Esq., appearing as counsel for defendant Bruno; Russell Graham, Esq. appearing as counsel for defendant Verda, and Clarence L. Belt, Esq. appearing as counsel for defendants Connley and Quirin; the Court orders that the Trial be proceeded with, whereupon still found on premises visited by the jury is offered in evidence, and is marked U. S. Exhibit No. 23, for identification, and is received for the purpose of record.

A. G. Barber resumes the stand and no cross-examination having been made of said witness by counsel for defendants Bruno and Verda, he is cross-examined by Clarence L. Belt, Esq., for defendants Connley and Quirin; is questioned by the Court, and is cross-examined by Mr. Graham.

Charlie Hudson is called and sworn and testifies for the Government and is cross-examined by Mr. Herron, and thereupon testifies on redirect examination conducted by Attorney Ohannesian.

Albert Kruse is called and sworn and testifies for the Government, and the jury retire from the court room, by order of the Court.

A statement is now made by Mr. Ohannesian, in the absence of the jury, and said attorney suggests that witness Kelly be brought before the Court, whereupon the jury are again brought into the court room, and all appearing as before, witness Kruse being on the stand, Attorney Ohannesian resumes his questioning of said witness on direct examination; and no cross-examination having been made a this time by counsel for defendant Bruno, said witness is cross-examined by Mr. Belt, counsel for defendant Connley, who moves that certain portion of testimony be stricken, and the motion is denied.

O. G. Spencer, heretofore sworn, resumes the stand and testifies further on direct examination and is cross-examined by Russell Graham, Esq., and at this time the following exhibit is offered and admitted in evidence for the defendants, to-wit:

Defendants' Ex. F: Picture of mine shaft and timbering.

The Court now admonishes the jury and orders that they go to the jury room, and thereupon the jury having left the court room,

Witness Kelly, heretofore sworn, is produced in court and is questioned by the Court, and at this time Mr. Belt having objected to the procedure, the Court continues its questioning of said witness, and an exception is taken by defendant Connley, through Mr. Belt, and the witness is questioned by Mr. Belt.

The jury are brought into court, and witness Kelly is questioned by the Court, over the objection of counsel

At the hour of 11:45 o'clock a. m., the jury are excused to the hour of 2 o'clock p. m., and retire from the court room; whereupon witness Kelly is ordered into the custody of the United States Marshal, and at the hour of 11:47 o'clock a. m., a recess is declared to the hour of 2 o'clock p. m.

At the hour of 2 o'clock p. m., court reconvenes, and all appearing as before, including the jury,

O. G. Spencer, heretofore sworn, resumes the stand and testifies further on direct examination conducted by counsel for the Government, and is cross-examined by Mr. Belt.

Charles Kruse is called and sworn and testifies for the Government and is cross-examined by Mr. Herron; whereupon said witness testifies on redirect examination conducted by Attorney Ohannesian, and is recross-examined by Mr. Graham.

Thomas W. Noe is called and sworn and testifies for the Government and is cross-examined by Mr. Belt, whereupon 146 cases of alcohol are offered in evidence, and mash, on premises, is also offered, and both are received in evidence but are not marked by the Clerk, for the reason that said alcohol and mash are not produced in the court room.

The jury again retire from the court room, and in their absence, Attorney Graham moves the Court for a directed verdict of not guilty as to defendant Verda on the first, second, third, fourth, fifth and sixth counts of the Indictment; and the motion is overruled, with exception noted.

Attorney Herron moves for directed verdict of not guilty as to defendant Bruno on the first, second, third, fourth and fifth counts of the Indictment, and also the

sixth count thereof, and the motion is overruled, with exception noted.

Attorney Belt moves for directed verdict of not guilty as to defendant Connelly, and the motion is overruled, with exception noted, whereupon said attorney makes a like motion for directed verdict of not guilty as to defendant Quirin on counts one to six inclusive, and thereupon said motion having also been overruled with exception noted for the defendant, a statement is made by Attorney Herron, and stipulation is entered into re testimony of one Bryan, or Bryant; whereupon the jury are brought into court, and the said stipulation is stated to the jury, and thereupon

The Plaintiff rests.

Joe Verda is called and sworn and testifies in his own behalf under examination conducted by Attorney Graham, whereupon the jury retire from the court room, and offer of proof is made by Attorney Graham, and the proffer is overruled, and an exception is noted to the Court's ruling. The jury return to the court room, and all being present as before, witness Verda testifies further on direct examination conducted by Attorney Graham, and is cross-examined by Attorney Ohannesian. At the hour of 3:40 o'clock p. m., a recess is declared, and thereafter court reconvenes, and all being present as before,

Nick Bruno is called and sworn and testifies in his own behalf, under questioning conducted by Mark L. Herron, Esq., and is cross-examined by Mr. Ohannesian, and is questioned by the Court, and thereupon said witness having testified on redirect examination conducted by Mr. Herron;

All defendants rest and plaintiff rests.

The jury are now excused to the hour of 10 o'clock a. m., March 26th, 1930; and having left the court room, Mark L. Herron, Esq. moves to strike the last paragraph of the Amsbaw written statement, U. S. Exhibit "I saw Nick Bruno" and thereupon the Court having so ordered, J. Geo. Ohannesian, Esq. moves to strike the entire document.

Attorney Graham moves for a verdict of not guilty as to defendant Verda

Attorney Herron moves for a verdict of not guilty as to defendant Bruno

Attorney Belt moves for a verdict of not guilty as to defendants Connelly and Quirin, and each of the said motions is overruled, as before, and exceptions are noted.

Defendants' Ex. G is now offered and marked for identification, being as follows, to-wit:

Defendants' Ex. G, for Ident: Lease offered while defendant Bruno was on the witness stand and said exhibit having been so marked for the purpose of the record,

W. J. Hanlon appears for witness Kelly, and states that Mr. Kelly will be produced when Mr. Ohannesian desires.

At the hour of 4:45 o'clock p. m., a recess is declared in this trial until the hour of 10 o'clock a. m., tomorrow.

At a stated term, towit: The February Term, A. D. 1930 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the

26th day of March in the year of our Lord one thousand nine hundred and thirty.

Present:

The Honorable John M. Killits, District Judge.

United States of America, Plaintiff,)	
)	
vs.)	
)	
Nick Bruno,	)	No. 9926-M Crim.
Joe Verda,)	
Peter Connley alias George Walker,)	
Herman F. Quirin,)	
Defendants.)	

Court reconvenes at the hour of 10:22 o'clock a. m., for further trial of this cause, all defendants being present; Samuel W. McNabb, United States Attorney, and J. Geo. Ohannesian and Emmett E. Doherty, Assistant United States Attorneys, appearing as counsel for the Government; Mark L. Herron, Esq. appearing as counsel for defendant Bruno; Russell Graham, Esq. appearing as counsel for defendant Verda; and Clarence L. Belt, Esq. appearing as counsel for defendants Connley and Quirin; all jurors being present and official stenographic reporter Hossack being present;

At the hour of 10:22 o'clock a. m., J. Geo. Ohannesian, Esq. argues to the jury in support of the Government's case, and thereafter,

At the hour of 10:50 o'clock a. m., Mr. Belt argues to the jury for defendants Connley and Quirin.

A recess is declared, at the hour of 11:22 o'clock a. m., until the hour of 11:30 o'clock a. m., and thereafter, at the hour of 11:36 o'clock a. m., Mr. Graham having argued to the jury for defendant Verda; at the hour of

12 o'clock, Noon, a recess is declared to the hour of 1:30 o'clock p. m.

At the hour of 1:33 o'clock p. m., Attorney Herron argues to the jury, court having reconvened at said hour, and all being present as before.

At the hour of 2:02 o'clock p. m., J. Geo. Ohannesian, Assistant United States Attorney, argues to the jury for the Government, and thereupon, at the hour of 3 o'clock p. m., the Court admonishes the jury and declares a recess.

At the hour of 3:12 o'clock p. m., court reconvenes, and all being present as before, the Court instructs the jury on the law involved in this case, and thereafter Russell Graham, Esq. excepts to the failure of the Court to give requested instruction number one, whereupon the Court gives requested instructions numbers two, three, four and five, and refuses to give requested instruction number six, as repetition; whereupon the Court refuses to give requested instruction number nine, and number ten is withdrawn; and the Court having refused to give requested instruction number eleven; numbers twelve and thirteen are withdrawn, and requested instructions numbers fifteen and sixteen are given to the jury by the Court. Attorney Graham excepts to certain instructions given by the Court on its own motion, and thereupon Attorney Ohannesian having called the Court's attention to a certain case; Attorney Belt excepts to certain instructions given as to defendant Quirin, and the Court enlarges instructions given; whereupon the Court having instructed the jury that when they have agreed upon a verdict, they may deliver the verdict to their foreman, and may then separate, to return to court at the hour of 10 o'clock a. m., tomorrow; the jury,

at the hour of 4:47 o'clock p. m., retire, in charge of Bailiff Wymen, who is sworn to care for the jury during their deliberation upon a verdict. Defendants' requested instructions numbers nine, eleven and fourteen are read into the record, and pursuant to stipulation, are deemed to have been read and excepted to in the presence of the jury.

At the hour of 5:30 o'clock p. m. the jury appear in the court room, and all being present as before, the Foreman asks a question, which is answered by the Court, and the jury again retire.

At the hour of 6:15 o'clock p. m., the Court orders that the United States Marshal provide meal for the jury and accommodations for the night, if necessary.

At a stated term, to wit: The February Term, A. D. 1930, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 27th day of March in the year of our Lord one thousand nine hundred and thirty.

Present:

The Honorable John M. Killits, District Judge.

United States of America, Plaintiff,)	
)	
vs.)	
)	
Nick Bruno,	)	No. 9926-M Crim.
Joe Verda,)	
Peter Connley alias George Walker,)	
Herman F. Quirin,)	
Defendants.)	

This cause coming on for further trial, at the hour of 10 a. m., Attorneys J. Geo. Ohannesian and E. E. Doherty

appearing for the Government; Attorney Russell Graham appearing for defendant Verda and Attorney Clarence L. Belt appearing for defendants Connley and Quirin; all defendants on trial and the jury being present, and stenographic reporter Hossack being present; the Foreman of the Jury is now asked if the Jury have agreed upon a verdict herein, and replies that they have agreed, whereupon the verdict is presented, and is read in open court, the said verdict, as presented and read, being as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

United States of America, Plaintiff vs Nick Bruno, Joe Varda, Peter Connley, alias George Walker, and Herman F. Quirin, Defendants. No. 9926-M-Crim.

VERDICT. We, the Jury in the above-entitled cause, find the defendant, Nick Bruno; Not guilty as charged in the 1st count of the Indictment, and

Not guilty as charged in the 2nd count of the Indictment, and

Not guilty as charged in the 3rd count of the Indictment, and

Not guilty as charged in the 4th count of the Indictment, and

Not guilty as charged in the 5th count of the Indictment, and

Not guilty as charged in the 6th count of the Indictment, and the defendant, Joe Verda:

Not guilty as charged in the 1st count of the Indictment, and

Not guilty as charged in the 2nd count of the Indictment, and

Not guilty as charged in the 3rd count of the Indictment, and

Not guilty as charged in the 4th count of the Indictment, and

Not guilty as charged in the 5th count of the Indictment, and

Not guilty as charged in the 6th count of the Indictment, and the defendant, Peter Connley, alias George Walker:

Guilty as charged in the 1st count of the Indictment, and

Guilty as charged in the 2nd count of the Indictment, and

Guilty as charged in the 3rd count of the Indictment, and

Guilty as charged in the 4th count of the Indictment, and

Guilty as charged in the 5th count of the Indictment, and

Guilty as charged in the 6th count of the Indictment, and the defendant Herman F. Quirin:

Guilty as charged in the 1st count of the Indictment, and

Not guilty as charged in the 2nd count of the Indictment, and

Not guilty as charged in the 3rd count of the Indictment, and

Not guilty as charged in the 4th count of the Indictment, and

Not guilty as charged in the 5th count of the Indictment, and

Not guilty as charged in the 6th count of the Indictment.

Los Angeles, California, MARCH 26, 1930.

Young Wilhoite
FOREMAN OF THE JURY

The jury having returned their verdict as aforesaid, the Court comments on certain aspects of the cause, and the defendants who have been acquitted are ordered released, and their bonds are hereby exonerated.

Property seized herein is ordered destroyed, and it is ordered that any part thereof that is salvable shall be turned into money. It is further ordered that dynamite be used to destroy that which it is impracticable to use. J. Geo. Ohannesian, Esq. thereupon suggests that the evidence be not destroyed at this time, but that a watchman be held on the property; and no further order having been made by the Court at this time re property or apparatus, defendants Connley and Quirin are remanded to the custody of the United States Marshal for sentence, to be pronounced at the hour of 10 o'clock a. m., Monday, March 31st, 1930.

At a stated term, to wit: The February Term, A. D. 1930 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 31st day of March in the year of our Lord one thousand nine hundred and thirty.

Present :

The Honorable John M. Killits, District Judge.

United States of America, Plaintiff,)	
)	
vs.	)	No. 9926-M Crim.
)	
Bruno, et al.,	)	Defendants.

This cause coming before the Court for sentence of defendants *Peter Connelly*, alias George Walker on six counts, and Herman F. Quirin on the first count; P. V. Davis, Asst. U. S. Attorney, appearing for the Government and Clarence L. Belt, Esq. appearing for the defendants, it is ordered that this cause be continued to Wednesday, April 2nd, 1930 for sentence of defendants, as aforesaid, who are now present, at the hour of 10 a. m.

—

At a stated term, to wit: The February Term, A. D. 1930, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 2nd day of April in the year of our Lord one thousand nine hundred and thirty.

Present :

The Honorable John M. Killits, District Judge Pro Tem.

United States of America, Plaintiff,)	
)	
vs.	)	No. 9926-M Crim.
)	
Bruno, et al.,	)	Defendants.

This cause coming before the Court for sentence of defendants *Peter F. Connley*, alias George Walker, on six

counts, and for sentence of Herman F. Quirin on the first count; J. Geo. Ohannesian and Emmett E. Doherty, Assistant United States Attorneys, appearing as counsel for the plaintiff, and Clarence L. Belt, Esq. appearing as counsel for the said defendants, who are both present; Attorneys Mark L. Herron and Russell Graham being also present at this time, and Dudley Hossack being present as official stenographic reporter of the testimony and the proceedings; the said Clarence L. Belt, Esq., now moves for new trial for defendants Connley and Quirin; whereupon a statement is made by the Court and the said motion is overruled and an exception is noted; and thereupon Attorney Belt having made a statement in mitigation of sentence as to the said defendants; statements are made by J. Geo. Ohannesian, Esq., and the Court, whereupon plea for probation is denied; and the Court now pronounces sentence upon defendant Peter Connley, alias George Walker, true name Peter F. Connley, on six counts of the Indictment for the crime of which he stands convicted, namely, violation of Section 37 Federal Penal Code, conspiracy to violate Section 3, Title II of the National Prohibition Act; and Sections 3258, 3281 and 3282 of the United States Revised Statutes, and the National Prohibition Act, as amended, and it is the judgment of the Court that said defendant Peter F. Connley be imprisoned in the United States Penitentiary, at McNeil Island, Washington, for the term and period of one year and two months on the first count; two years on the second count; one year and two months on the third count; one year and one month on the fourth count; and one year and one month on the fifth count, sentences to run consecutively, making a total sentence of six years

and six months; and in addition thereto, pay a fine unto the United States of America in the sum of \$4000.00, and court costs taxed at \$947.22, and with respect to the sixth count, it appearing that this does not involve imprisonment, but a maximum fine of \$500.00, which the imposition of fine of \$4000.00, aforesaid covers, it is the further judgment of the Court that said defendant stand committed until said fine of \$4000.00, and costs, shall have been paid.

The Court now pronounces sentence upon defendant Herman E. Quirin for the crime of which he stands convicted, on the first count, namely, violation of Section 37 of the Federal Penal Code—conspiracy to violate Section 3, Title II of the National Prohibition Act, and it is the judgment of the Court that said defendant Herman F. Quirin be imprisoned in the United States Penitentiary at McNeil Island, Washington, for the term and period of twenty-one months on the first count, and in addition thereto, pay unto the United States of America, a fine in the sum of \$1000.00 and court costs taxed at \$947.22 and stand committed until said fine and costs shall have been paid.

It is further ordered that the supersedeas bond, on appeal, of Peter F. Connley be fixed in the sum of \$12,000.00, and that the supersedeas bond of defendant Herman F. Quirin be fixed in the sum of \$6000; said bonds to be furnished not only for the production of the defendants for imprisonment, in the case of confirmation of the judgment of this court, but also for the payment of fines and costs imposed. Exception is noted on behalf of both defendants.

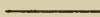
Upon motion of J. Geo. Ohannesian, Esq., it is ordered that liquor and mash, contents of four cans marked in evidence, and copper column marked in evidence be returned to the Prohibition Department for safe keeping; and on further motion of said defendant, it is by the Court ordered that the day book offered in evidence at the time witness Kelly was a Government witness (referred to as Kelly day book) be impounded for use of the Government, and be turned over to Mr. Spencer, Prohibition Agent.



IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.



HON. JOHN M. KILLITS, JUDGE PRESIDING.



UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 NICK BRUNO, JOE VERDA,)
 PETER CONNLEY, alias George)
 Walker, and HERMAN QUIRIN,)
)
 Defendants.)

No. 9926-M.
Criminal.



BILL OF EXCEPTIONS ON BEHALF OF PETER CONNLEY AND HERMAN F. QUIRIN



Be it remembered that at a stated term of court, begun on Monday, the 3rd day of February, 1930, the grand jurors of the United States returned into this court a cer-

tain indictment charging the defendants Peter Connley and Herman F. Quirin and others in six counts,

1. With the crime of conspiracy to violate Title II of the National Prohibition Act;
2. With the offense of manufacturing intoxicating liquor in violation of the National Prohibition Act as amended;
3. With the offense of possessing a still which had not been registered with the Collector of Internal Revenue;
4. With the offense of carrying on a distillery without having given bond;
5. With the offense of fermenting mash on premises other than a bonded distillery; and
6. With the offense of unlawfully possessing intoxicating liquor in violation of the National Prohibition Act.

And said defendants thereafter pleaded not guilty and thereupon issue was joined. And afterwards, to-wit, at a session of said court, held in the City of Los Angeles, California, before the Honorable John M. Killits, Judge of said court, on the 18th day of March, 1930, the aforesaid issues between the parties came on to be tried before a jury of said court for that purpose duly empaneled.

Exception No. 1

At this stage came as well the government and said defendants with their respective attorneys, to-wit, Messrs. J. George Ohannesian and Emmett E. Doherty, Assistant United States Attorneys, representing the plaintiff, and Mark L. Herron, representing the defendant Nick Bruno, Russell Graham representing the defendant Joe Verda, and C. L. Belt representing the defendants Peter Connley and Herman F. Quirin. And the attorneys for the said

(Testimony of O. G. Spencer.)

defendants moved the court to require the plaintiff to elect whether it would proceed on the second count of the said indictment or on the fifth count of the said indictment, and to require the said plaintiff to proceed on one only of said counts, on the ground that the offense named in the fifth count of the indictment was necessarily included in the offense named in the second count of said indictment. This motion was by the court denied and the defendants excepted.

After the indictment was read and the plea of not guilty stated, the following proceedings were had:

It was stipulated by and between counsel for all the parties to the action, which stipulation was approved by the court, that any objection made by counsel for any defendant or any exception taken might be understood to apply for the benefit of all defendants to the action.

PLAINTIFF'S EVIDENCE.

O. G. SPENCER,

a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN,

THE WITNESS: My name is O. G. Spencer. I am an investigator for the United States Government and have been in the government service in that capacity about four years, having had no other positions with the government. I am located in Los Angeles in this Division, as an investigator under the jurisdiction of Mr. Woods of the prohibition department. I know and have been on the land described as the west five acres of lot 2, the whole of lot 3, and the east five acres of lot 4 of the Sunny Slope Divi-

(Testimony of O. G. Spencer.)

sion of Section 28, Township 5 south, Range 4 West, County of Riverside, State of California. That is about five miles northeast of the Town of Elsinore. I was there the first time on January 22nd or 23, 1930. I measured the ground and made a pencil sketch.

(Whereupon it was stipulated that the pencil sketch mentioned might be introduced in evidence; and it was introduced as Government's Exhibit No. 1.)

THE WITNESS: I might state that during the last trip that I was over there I got the city engineer of Elsinore with his transit to lay off the lands and directions. We located the corners and measured from the section corners.

(Whereupon an enlarged blackboard drawing of said pencil sketch was exhibited to the jury and referred to from time to time.)

THE WITNESS: I made the blackboard drawing from the pencil sketch. The blackboard drawing is exactly like the pencil sketch except that it is on a larger scale. This from here up represents Section 21, most of which is recorded in the books as the property of Quirin and others. That is the way it is listed on the books, with the exception of this corner cut up here, which is the northwest corner. That is not included in this. The balance of this quarter section is. This is the northeast quarter section of Section 21, Township 5 east, Range 4 west; and from here down the Sunny Slope Division, the top part of that subdivision, is divided into four lots supposed to be approximately 20 acres each, 1, 2, 3 and 4. Bruno's ranch includes all of No. 3, the west five acres of No. 2 and the east five acres of No. 4. No. 3 includes a fraction

(Testimony of O. G. Spencer.)

less than 20 acres. There is about 30 acres in the entire lot that is included between the dotted lines. This is in Section 28, the same township and range as the one above, in the northeast quarter section of Section 28.

This is the main paved highway from Elsinore to the town of Perris. It is referred to as the Perris-Elsinore Highway and it is paved all the way through. It is probably 20 feet wide and is marked "A" on the map. This building here is the home of Herman Quirin, one of the defendants, and is indicated by the letter "B" on the map. There is a dirt road that leads off of the highway here practically straight north of Herman Quirin's home. The road here runs within 30 feet of the house. This dirt road leads off. It is not a graded road. It is just level ground there where they have been driving. It passes right in front of his house and straight south across his property into this ranch of Bruno's, through a gate right here. The road is indicated on the map by "C" and the gate by "D". The distance from the Elsinore-Perris Highway to the Quirin house is indicated on the map as being 30 feet. This is the first fence. There is no fence from the road down until you come to this fence around Bruno's property. There is a gate through that. The road runs straight on to the house and passes the house and goes between where the still was and the shed here that was stacked up with distillate in drums. The house is indicated on the map by "E".

(It was stipulated at this point that the property referred to as the Bruno property was the property of the defendant Nick Bruno.)

THE WITNESS: This road runs on past there to another gate here, where you get out of the fence. That

(Testimony of O. G. Spencer.)

is the limit of the extent of the fence. Right here opposite the shed the road extends down the hill. The other gate is indicated on the map by "F". The other gate is directly south of the house that is marked "E." The road extends right straight on through there between the house and the shed here. It is a private road all the way across this property of Bruno's. The still was located in a pit, 40x50 feet, 200 feet southeast of the corner of the house, and is indicated by the letter "G." There was a shed directly west of the still upon the hill, in which there were sixty 50-gallon steel distillate drums, about half of them full of distillate. This shed is indicated on the map by the letter "H." It is 200 feet in a direct line from the corner of the house marked "E" to the location of the still marked "G;" and the house is on a hill. The ground where the still is is about 18 to 20 feet lower than the ground on which the house is situated. Directly in front of the shed which is marked "H" on the map there was a steel drum buried in the ground, which was almost covered up, just the top of it showing, just across the road from the shed, about 20 feet from the shed, indicated on the map by the letter "I." There was no gage on the top of the tank although there was some fuel oil in the tank. I measured it with a stick and it was approximately half full. There was a pipeline run directly from that tank down to the still pit to the burners, the pipeline being marked on the map "J." The circle on the map represents the dump there of an old mine. This is the direction that the mine took from the dump. It was an incline shaft, about maybe 60° from the horizontal; not a straight shaft.

(Testimony of O. G. Spencer.)

I did not go into that pit but observed about 60 feet from the entrance of the hole that there was a platform built down in the mine; and there was a gasoline engine-driven power pump down in there. The exhaust ran up the shaft to the top and there was a Ford muffler on top of the exhaust; and connected directly to that water pump was a 2-inch iron pipe. The pipe came out of the dump and down over the end of it; and at the time I was there that was the end of the pipe coming from the mine. But right here was another pipe extending from there to a concrete tank, that is, from the road "C-C" down to the other tank. There was a 2-inch pipe all the way. This pipe here had been disconnected recently and it had been pulled around away from the end here because the weeds and the grass were all still pulled over. With the assistance of Chief Barber of Elsinore we pushed the pipe back and it certainly fitted the end of this pipe. The other end of the pipe emptied into a 20x20 cement pit right back of the Bruno house, which house is marked "E." When I say "pit" I mean a cement reservoir nearly on top of the ground, 3 feet deep and 20 feet square. When I got there there were about six inches of water in the reservoir. There was 2-inch pipe from the bottom of that reservoir came out and directly to a small tank in this still pit. I looked around to see if there was any other pipe or source of water for the still and I couldn't find any pipe or anything to supply water from any source except this one.

Referring to a mark on the map, apparently an extension of the road marked "A," there is a small range of hills or mountains right in here; and just south of it it flattens out again and there has been quite a lot of driving through

(Testimony of O. G. Spencer.)

here in all directions. There is no graded road through. That is west and south of this property. And right here, a little bit southeast of the Bruno house, there is an old shed or house on the hill off the Bruno property; and there has been some travel around this old place but there is no graded road and very little travel. There is no one living there at present but I saw one or two cars drive up there and park for a while and drive away while we were here at this place. An examination of that road showed there had been a little travel down in here. It looked like there might be one or two automobiles driving in there recently and to this place where I saw one or two cars. The road indicated that it had been very light traffic over that road.

(Whereupon two photographs, which were produced by counsel for the defendants, were introduced by stipulation as Government's Exhibit No. 2. And the road marked "A" on the map was pointed out by the witness on this photograph, as was also the house marked "B", the road marked "C", the road extending straight south to the Bruno house, and the gate marked "D".)

THE WITNESS: The photograph shows a rock dump of the mine. The pump and engine were down in the mine right on the incline back of that dump. This dump is marked "K" on the blackboard.

(Whereupon a photograph, produced by counsel for the defendants, was, by stipulation, introduced and marked Government's Exhibit No. 3.)

THE WITNESS: Referring to this photograph, it is not a very good picture. It is not all taken at one time, that is, there are several pictures pasted together. I have got it picked out now, I guess. This is the shed, marked

(Testimony of O. G. Spencer.)

“H,” up there that the distillate was found in. The distillate tank is in the ground just across the little streak here. I don’t know whether it shows in the picture or not. It was almost entirely covered up. It doesn’t show in that picture. You can’t see the tank but it is right straight across from this shed; and the pipeline ran down the hill and entered the ground right about here. This is the edge of the still pit. This pile of hay here was stacked up around parts of the still column that stuck above the ground level; and under this pile of hay were two copper still columns about 28 or 30 feet distant from the top of the stack to the bottom of the pit in this corner where the stills were; and then the still pit was not as deep all over as it was right under the haystack. The pit was 50 feet by 40 feet and about 12 feet deep right under the sod. This is the Bruno house right up here. The cement water tank is behind this house. The pipe runs down past these trees and on under the ground. This is a little shed just down on the hill, used for nothing in particular. There is a little footpath runs from the house right down there, with a gate there, and there is a wire fence around this part of the ranch, in addition to the ranch being entirely surrounded by another fence. “D” is the gate, and there is an extension of the road “C” leading through the ranch which you have described and going to a gate to the back of the ranch. This road leads to the south gate of the ranch.

(Whereupon a photograph, Government’s Exhibit No. 4, was, by stipulation, admitted in evidence.)

THE WITNESS: I was present and assisted in taking a full set of pictures. This picture was taken looking

(Testimony of O. G. Spencer.)

west from across the slough on the hill, covering the still pit and the house.

(Whereupon Government's Exhibit No. 5 was, by stipulation, admitted in evidence.)

THE WITNESS: This picture is a correct representation of a stack of hay where the still was located. The picture was taken from right near the small shed where the distillate was stored, showing the hay and the stack of sugar.

(Whereupon Government's Exhibit No. 6 was received in evidence.)

THE WITNESS: This picture was taken from almost the same place, looking east. The camera was pointed almost directly east; and it shows the hay stacked around the still and a pile of sugar. It differs from Government's Exhibit No. 5 in that the top of the roof over the hay had been loosened and raised a little bit, showing the top of a wooden frame that had been built up inside of the baled hay. Government's Exhibit No. 6 was taken from the same place as Government's Exhibit No. 5, without moving the camera. It shows a little more of the hay moved away and the top was opened up a little more, exposing a little more of the framework inside of the hay.

(Whereupon Government's Exhibit No. 7 was received in evidence.)

THE WITNESS: This picture was taken at the same time as the last one. The camera was moved a little closer. It shows a little more of the hay removed and some of the parts removed and exposing the top of the

(Testimony of O. G. Spencer.)

water tank on the one hand and the top of the still tank on the other.

(Whereupon Government's Exhibit No. 8 was received in evidence.)

THE WITNESS: This picture was taken at the same time as the preceding exhibit but taken from the south. The camera was pointed north. It shows a smoke-stack for a boiler from the pit, the end of the pile of sugar, the baled hay that was stacked around the top of the still, and it shows the shed up here where the distillate was stored and the Bruno house and trees. I had the official photographer with me, these being government's pictures.

(Whereupon Government's Exhibit No. 9 was received in evidence.)

THE WITNESS: This was taken at the same time as the others and it is down in the pit. It is a flashlight picture, showing a part of the mash vats and also an electric bell that was tacked up on a post right next to the entrance to the pit.

(Whereupon Government's Exhibit No. 10 was received in evidence.)

THE WITNESS: This is another flashlight picture, taken from down in the ground from almost the same position. It shows a few of the tanks and the ladder from the pit to the entrance over here and also the electric bell.

(Whereupon Government's Exhibit No. 11 was received in evidence.)

THE WITNESS: This picture was taken on the same date and shows the boiler in that pit and the edge of one of the tanks. It was not directly under the hay but it was

(Testimony of O. G. Spencer.)

in the pit that was under the hay. You see, the pit extended quite a ways out all around the hay.

(Whereupon Government's Exhibit No. 12 was received in evidence.)

THE WITNESS: This picture was taken before this last bunch a day or two. It shows the copper still columns, part of them, and a stack of empty 5-gallon alcohol cans. There was a mirror hanging on the east edge of the still pit. If a man would stand with his back to the entrance to the still pit and look into this mirror, he could see anyone coming down the ladder into the pit. Government's Exhibit No. 12 was taken down in the pit, a flashlight picture directly under the pile of hay, and shows part of the still, on the top of which those columns are bolted that we have seen in another picture, and a pump that pumps the overflow or surplus water out of the pit. That was a steam-driven pump.

(Whereupon Government's Exhibit No. 13 was received in evidence.)

THE WITNESS: That picture shows the steam gages and so forth, or pressure gages, in other words, in a looking glass, and a part of the piping in the pit right directly in connection with the still and under the hay that was there.

(Whereupon the witness was temporarily excused, not having finished his direct examination. On March 25, 1930, the witness was recalled for further direct examination and testified as follows:)

THE WITNESS: I have gone out to the Bruno Ranch about five times altogether. The last time was yesterday and I was out there last Saturday. The first

(Testimony of O. G. Spencer.)

time I was there I arrived about 11 o'clock in the morning of January 24, 1930, three days after the raid. I went alone as far as Elsinore, where I picked up Chief of Police Barber, who went with me. I made an investigation of everything that I could find or see from the highway by Mr. Quirin's home, through the Bruno Ranch and around the still and around the house and all the sheds and everything that I could find that had any bearing on the case. I know where the mine pit is located. On the first day I was there I examined the pipeline and the water system from the pumps down in the mine all the way to the Bruno house and to the still. There was no other pipe connection or no other source of water supply to the still itself that I could find other than this pipeline, except there was a portable system. They could have hauled water in a wagon or something; but there was no regular pipeline system. That was the only permanent means of water supply. From the mine the pipeline runs in an almost direct course to Mr. Bruno's ranch and right straight south from the north fence on his ranch to a concrete pit right back of the house. It ran over farming ground across Mr. Bruno's place, about the same type of ground north of Bruno's place, and across Quirin's place. Grain had been planted on the land through which this pipeline passed but it had not sprouted yet. Yesterday was the last time I went out there and observed that there was grain growing. There were either four or five places that the pipe cropped out of the ground from the mine to the concrete pit. Three of those were inside of the fence in the field of grain—cropped out in three places in the field. The pipeline ran from about 8 inches below the ground to

(Testimony of O. G. Spencer.)

the surface of the ground, and in some places it stuck above the surface just a little bit. There was a pipeline running from the fuel tank buried in the ground directly in front of the shed near the Bruno house direct to the still pit and the pit of the boiler. It ran through the planted field. The pipe showed up for 15 or 20 feet between the tank and the still up near the fuel tank. After it left the gasoline tank or reservoir it went to the burner under the boiler in the still pit. I followed the pipe all the way except right for a little distance. On the roof of the still pit it was covered up in the dirt before it came through the wood. I saw where it was connected at the far end to the fuel tank. The buried tank was a little over half full of fuel.

In the shed that was on the hill near the Bruno house I examined the oil drums and found 60 altogether. All of them had marked on one end, "No. 2, Dist." I don't know what that "Dist." stands for. That was stencilled on the end. There was one similar drum, painted the same color, with the same marking on the end, at the Quirin home near the road when I arrived there; and it was there for one or two weeks after my first trip there. The Quirin home was right adjoining the Elsinore-Perris Highway near the mine. I went down into the still pit and made an investigation there, finding some large wooden fermenting vats and some galvanized tanks. Six of these vats were practically full to six inches of the top with mash, most of it fermenting. I figured the capacity of those vats to be between 8,000 and 9,000 gallons each. This mash was fermenting and boiling pretty lively. I poisoned it to stop that. At that time I noticed there were galvanized iron

(Testimony of O. G. Spencer.)

tanks in the pit. Two of them were connected up and the other was disconnected. The two that were connected up were practically empty; but there was very little liquor in the bottom, dripping out of the spigot, when I opened it. I went out there yesterday primarily to take Mr. Kruse to see if he could identify that boiler base; and I made a very casual investigation as to the lumber or timber that was used in the Quirin house, as I had examined that very thoroughly before. I made an investigation of the lumber that was used in the mine pit and, likewise, the timber or lumber that was used in the still pit. I was in court when the government offered in evidence tags as to items of lumber sold to Quirin.

In the still pit there were 4x4s, 2x4s and 2x12s. There were two or three 8x8s and several 6x6s. I did not find any like dimensions in the house known as the Quirin house. I did find in the mine pit some 2x2s and some 2x4s. I did not find any 4x4s in the mine pit. They were in the still pit next to the boiler on the east side of the pit. When I took Mr. Kruse there yesterday I examined the boiler base right at the still. The boiler base was lying within about 20 feet of a pile of hay over the still. That was the dismantled boiler outside. Mr. Kruse looked at it. He knew nothing about the base of the new boiler, that is, the new boiler outside. I recall that there were what appeared to be new tubings at the still of 2-inch diameter, 6 feet long. There were four new tubes and three old tubes in the pile.

CROSS EXAMINATION

BY MR. GRAHAM:

THE WITNESS: I didn't see any 4x4 timbers in the mine pit.

(Testimony of O. G. Spencer.)

(Whereupon Defendants' Exhibit F was received in evidence, which was a photograph of the mine pit or shaft near the Quirin house.)

THE WITNESS: I recognize that to be a photograph of the mine shaft. I don't know whether the timbers that form the timbering of the hole itself are 4x4 timbers. I didn't notice any 4x4 timbers and there is no way on earth to tell the dimensions of anything by a photograph. I was down in the mine shaft all the way to the pump. I did not examine or measure the timbers shown in the photograph supporting the top of the hole. I looked at them to see if it looked safe enough to go down. I went down to the pump, which was about 60 feet below the top of the hole, but didn't look at those timbers very closely. I think they were square but I wouldn't like to be too definite on that. They were not round timbers; I am sure of that. They might have been 3x4s or 4x5s or something like that; but they were approximately square. They might have been 4x4s. I didn't examine those very closely. The main idea in going down into that shaft was to get the number off the pump and the engine. I was not down there yesterday. I said I made an examination of some of the lumber yesterday but I made a thorough examination before yesterday. My main business in the mine was to examine the pump and the engine. The reason that I happened to take the dimensions of part of the lumber and not of the rest was that was right before my eyes as I went down. I walked right past there to get down the hole. There was timber under water in the bottom of the shaft. I stopped at the pump and it was about three feet from the water. I saw some timber below the water also. That also went down under the water. One had the side into the water.

(Testimony of O. G. Spencer.)

O. G. SPENCER,

recalled, and testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: When I went down to the still pit I made an investigation as to the kind of light or lamp that was used in the pit. They were a gasoline hand lantern that uses a mantle, with an air pump attached to the base of the lamp, to pump up the pressure on top of the gas or fuel, a self gas generating light.

My attention being called to Government's Exhibit No. 22, I have seen it before. I got that out of a box nailed on the wall right near the boiler, in a steel pit.

Referring to Government's Exhibit No. 22, I brought it in, and it has been in my possession until this trial started, and it was brought to the courtroom by Mr. Clements, and I had possession, except while he was bringing it in from my car.

CROSS EXAMINATION

BY MR. BELT.

THE WITNESS: Directing my attention to the gasoline lamps, each lamp had two mantles. The mantles were not intact. Some of them were broken, but some of them still had the mantles attached. I saw three of the lamps, and I guess there were about half of the mantles broken. I would not say that there was one good mantle on each lamp. There was one lamp that I don't think had any mantle at all. I did not light the lamps, so I do not know whether they were in a working condition, as I did not try them.

(Testimony of William P. Clements.)

WILLIAM P. CLEMENTS,

a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I am a federal prohibition agent. Have held that position for two years, being in that position in January and February of this year. I have seen the defendant Verda before; also the defendant Bruno. First saw one of them on a ranch about five miles east of Elsinore, known as the Bruno Ranch in that district, that being the premises testified to by Officer Spencer. The first time I was in Elsinore was along about the 15th of January of this year, and I was in the company of three other agents then. Their names were Agents Short, Schermerhorn and Alles. On this first occasion I did not see any of the defendants. The next time I went there was January 21st. Agent Alles was with me. It was between 1 and 2 p. m. in the afternoon when I arrived at the Bruno Ranch. I first saw the defendant Joe Verda. He came out of the house on the ranch marked "E" on the map and walked down to the road with a red handkerchief in his hand. We were driving in an automobile and he came out of the door on the side of the house. We were probably two or three hundred feet away between this gate and the house. He walked on down the road we were coming in and he walked almost directly in front of the car and waved the handkerchief like this (indicating) to stop the car; and we didn't stop. We pulled on around him and drove clear around the side of the house and in back of the house marked "E." The defendant turned around and came back up to the house. I did not see the

(Testimony of William P. Clements.)

defendant Bruno at that time. At that time Verda didn't say anything. He came up to the house and the defendant Pete Connley, or George Walker—he gave his name as George Walker, the heavy set gentleman there at the corner of the table by Mr. Doherty, the assistant United States attorney—came out of the other door of the house. There are two doors, one on the south side and one on the north side of the house. The house is set east and west. He came out of the other door where we had driven almost directly behind the house. When we stopped he came out and he, Walker, otherwise Pete Connley, spoke to me and I told Mr. Walker who I was. He said, "Good afternoon," I believe it was. We passed the time of day. I don't remember the words he used. And I immediately told him who I was. I told him I was a federal prohibition agent and had information that there was a still on this ranch and that I would like to look around. At this time Agent Alles and the defendant Verda were standing close to the house, probably 5 or 6 feet away. Mr. Connley said he didn't know of any still around there and that we were perfectly welcome to look around, and to come on in the house. I told Connley there was nothing in the house I wanted to see; that, if the still I had heard was around there, it wouldn't be in the house. He said, "Come on in, anyway." And we went in the house, walked through the house, and in a small room we found a boiler for a still, I should judge a 150-gallon copper boiler. It was not in use. This was a boiler around 5 feet high and about 30 inches across, I should judge, with a connection in the top. There was nothing connected to the top. There were no coils. There was a connection for the fitting.

(Testimony of William P. Clements.)

It wouldn't be a pipe fitting but it was a joint. It had a cover like this and a round hole in the top of it; and, if I remember right, there was a connection for a bolt joint fitting. I had seen something like it before, having been in the prohibition business two years. I have seized between 40 and 50 illicit stills and I would say it was a boiler for a still. It had been used but not recently, the fact that it was smoked on the bottom indicating that it was used. There was no mash or anything on the inside. It had been washed out clean. Agent Alles, the defendant Peter Connley and myself turned around and came out of the house and walked over to a shed possibly 50 feet from the house. Verda stayed close to the house. He didn't stay in the house. He came out and stayed around close to the outside of the house. We walked out to this distillate shed (marked "H"); and it was practically full of 50-gallon distillate barrels and hay. There must have been 80 or 90 distillate barrels. I walked over to one of these and shook it and it was full of distillate. It was a 50-gallon iron barrel, the regular iron barrels they use for oil. At the same time I saw this buried tank in front of the shed, (marked "I"). I saw the top of this tank; and I walked back over to the defendant Connley and said, "Well, where is it at"? He said, "I don't know that there is anything around here." So Agent Alles and the defendant Connley and Verda, he having come out where we were about that time, and there being a very well defined road down this hill between the shed and the house, the road that ran down to the still—I said, "Let's walk down this road and see what there is here." So Agent Alles, the defendant Connley and the defendant Verda and I

(Testimony of William P. Clements.)

started down the road. Verda stopped about half way down to the still and Connley and Agent Alles and myself proceeded on down to the still location. We got to the top of the hole. And I asked the defendant Connley what was down in this hole. He didn't answer but he started on down the ladder of the hole; and he stopped at the top after he had taken a couple of steps on the ladder, his head being still above the hole, and said, "There is no use of you fellows coming down in here. We can fix this up all right. I know the owner of the still and we can all make some money on it." So I told the defendant Connley we would go on down; that money wasn't what I was there for. And we went down to the still. And there was about seven or eight thousand gallons of mash. It was about 8x12, 8 foot high and 12 foot across, approximately a thousand-gallon still, and some alcohol. I didn't know how much at that time. It later turned out there was one hundred and fifty 5-gallon cans. There were 25 5-gallon cans sitting on the floor, 625 gallons and a cooling tank. After we came back up out of there I immediately arrested the defendant Walker, or Connley. He gave the name of Walker. George Walker was the name I knew him by. Agent Alles and the defendant Walker and I came back up to where Verda was standing; and we arrested him, too, at that time and walked on back up to the house. When we went down to the still, that is, Agent Alles, Walker, Verda and I, there was a truck sitting back of the Bruno Ranch marked "E." As we started down there there were two or three gentlemen in the field down below the house at the time working on something, either a pipeline or on some lumber that was there. One

(Testimony of William P. Clements.)

of these gentlemen came up and got on this truck when we were about half-way down to the still. He started the truck up and drove it off. As soon as Alles, Walker, Verda and I came back to the house I asked Walker what his connections were there and he said he was building a water tank. There was some lumber there which he was working on. He said that he was a contractor. I asked Verda what his connections were there and he said he was hired to take care of the ranch, the mules and the house; was getting \$30 a month for doing it; that a man by the name of Frank Ramiro hired him; that he had been there about four days. The defendant Connley stated that he had been there about ten days. The defendant Connley didn't ask me how much money I was making a month at that time. He asked me if there wasn't some way that he could fix this up; that there wasn't any use of anybody going to jail over a place like this; that there was too much money invested; that it would be easy for all of us to make money. I did not observe the defendant Verda do anything while I was there except when we came up there he tried to stop us by waving his handkerchief at us and getting out in the road in front of us. That is the only thing he did while I was there. I left as soon as I had this conversation with the defendant Connley and the defendant Verda and followed this truck. I had the license number of the truck, having taken it when I went up there. I followed it over to the house on the highway that was occupied by the defendant Herman Quirin, the house marked "B". This truck drove up in the rear of that house and stopped, being stopped when I was there. I

(Testimony of William P. Clements.)

didn't see it come in but I followed it over there; and it was setting there when I got there. I stopped and went over to the truck. There was nobody around the place and I walked on in the house and there was nobody in the house. The house was furnished. At that time I didn't know whether this house was on the same ranch with the still or whether it was two different ranches. And I came out and went to Elsinore and called the prohibition department for help and at the same time met Chief of Police Barber. I had taken the rotary off this truck, off of the distributor of this truck, so that they couldn't move it. I was probably gone forty minutes. Chief of Police Barber and I came back from Elsinore to this house. And the truck was gone and the defendant Herman Quirin was there shaving when we walked into the house, into Quirin's own home, the house on the highway marked "B." There was nobody there but him. When I walked in he said, "What do you mean by coming in here"? I said, "I have come over after you." The defendant Quirin said, "What are you going to do? Take me over and set me on the spot"? So I told him I wasn't setting anybody on the spot; that, if he was guilty, I wanted him, and if he wasn't guilty I didn't want him. So I asked him what became of the truck. He said, "Well, the man that owned the truck took the truck away." I said, "Do you know the man that owned the truck"? He said, "I saw him a few times." I said, "Well, who was he"? He said, "Well, I don't know him by name but I know him when I see him." We waited until Mr. Quirin got through shaving, he being about a half or a third through, having just got his face lathered and had taken just about one

(Testimony of William P. Clements.)

scrape with the razor. We took him over to the still with us. All of the defendants made the statement that this ranch was the Bruno Ranch and that Nick Bruno owned it. I told Chief of Police Barber, if he knew where Nick Bruno was, to take my car and go get him. He didn't have any car. It was a government car we were using. So he took that car and proceeded back to Elsinore and in an hour or a little more the constable came. I do not know his name. He came back with Nick Bruno and some goats on a truck. So Agent Alles went with Bruno to take the goats wherever he, Bruno, was going; and then Bruno and Agent Alles came back. After we came back from Elsinore we stopped at Quirin's home, marked "B," and picked him up and came over to the Bruno Ranch, Bruno being the last man to come there, he coming there when he was brought there by the constable. At the time I went into the house marked "E," the Bruno house, I was invited in the house by the defendant Connley. And at that time I did not see an electric bell on the wall, but the first time I was in the still I saw a bell in the still on a post. I had never found the push button yet the first time I was in the house. Later that afternoon this bell and other apparatus was traced out by Chief of Police Barber and Mr. Piles of a newspaper out there; and they traced it back to the house and showed it to me. It was in the room next to the dining room. The bell was on the side of a 2x4 if I remember, on a joist that ran up; and they had nailed a board over this to cover up the button and you had to reach around this board to get around to push the button. I did not operate it to see whether it worked

(Testimony of William P. Clements.)

or not. I don't remember any of the defendants making any statements to me.

They were taken in two carloads to the Elsinore jail, there being Assistant Administrator Peters and Investigator Noe and Agent Alles and Investigator Rhodes, Chief of Police Barber and the constable. We left them at the Elsinore jail; and I did not at any time after that date have any conversation with the defendants.

I did not go back to the plant again until two or three days ago, when, being down there on some other business, I stopped in to see the place. But that is the only time. Well, I was there the next morning. I left there the night of the 22nd, when I was relieved. I came back from Elsinore to the plant and stayed there until the next evening, when I was relieved. I traced a pipeline out but I didn't go clear to the end of the pipeline. It ran across toward the Quirin Ranch from the still. It ran in that direction but I didn't follow it out and did not follow it as far as the road "E" between the two houses. The pipeline that I followed didn't go towards the road "E." It went out toward a water tank that was behind the Bruno house. The fuel line ran up the hill, right straight up to the road "E" there. I followed it. The fuel tank was right on top of the hill. It was up a little rise there at the edge of the road marked "E."

CROSS EXAMINATION

BY MR. GRAHAM:

THE WITNESS: I could see the house on the Bruno Ranch from the main highway; I wouldn't say just exactly from what point. It is not straight out this road marked "E." You can't see the house from a place on

(Testimony of William P. Clements.)

the highway near Quirin's Ranch, that is, if you can, I didn't see it; but you can see the house farther up the highway towards Perris. The road that runs past Quirin's house into the Bruno Ranch is not a straight road. There is a little curve around the hill; and then it goes right straight in. I don't believe you can see Quirin's house from the Bruno Ranch. I saw some different roads running in off the highway in the direction of the Bruno Ranch other than the one past Quirin's house; and I have gone over some of those other roads. I don't think there are several roads to get into the Bruno Ranch other than the road past Quirin's house, but there is one other that I know of. If there are others around there, I didn't see any. Referring to the one I know of, it hit the main highway I would say possibly half a mile toward Elsinore around a little hill there. Where the road curves around in here it would be clear around the hill from Quirin's house, as Quirin's house sits right down under a hill. If you were coming from the other way, you would miss the house. I have missed it several times. I noticed these curves in the highway marked "B," and I don't think the curve has got as great a curve as is shown on the map. But it curves around in here. I wouldn't say just how much it curves. I know there is a curve in that road but I do not know that it comes close to the Bruno ranch.

(Whereupon the witness was shown a panorama photograph, which was thereafter received in evidence and marked Defendants' Exhibit "A.")

THE WITNESS: I recognize that picture and I recognize the Bruno Ranch. I don't hardly believe the road comes as close to the ranch myself as is shown by

(Testimony of William P. Clements.)

the curve marked "A" on the blackboard. There is, however, a bend that goes right around that house. I wouldn't say how much it is because I never paid any attention. According to my recollection, this photograph correctly shows the lay of the land.

(Whereupon Defendants' Exhibit "B" was received in evidence.)

THE WITNESS: I recognize that photograph as a photograph of the back gate concerning which I have testified. I mark with an X a road which I think goes to the boulevard; but I am not certain about it. It looks like the road that goes down to the boulevard but I couldn't say for sure whether it is or not.

(Whereupon Defendants' Exhibit "C" was received in evidence.)

THE WITNESS: I recognize this photograph as a photograph showing the cement reservoir which was by the house on the Bruno Ranch, the photograph looking toward the front gate, with a small hand pump by the side of the reservoir. The goat sheds are off in the corner of the ranch. The land was under cultivation on the 21st day of January when I was there. I wouldn't say it had been plowed but a drill had been run over it and grain, it might have been barley or oats, seeded. It was just starting to sprout. If it had been plowed, it wasn't recently plowed. The ground wasn't soft.

(It was stipulated by Mr. Graham, in answer to questions of the Assistant United States Attorney, that the photograph which has been introduced as Defendants' Exhibit "B" shows that this is the back gate; this is the shed under which the distillate tanks were found and this

(Testimony of William P. Clements.)

is the house. The reservoir is on the other side of the house. The gate is farther up this way. This is the haystack that had the still under it.)

(Whereupon Defendants' Exhibit "D" was received in evidence.)

THE WITNESS: This is a picture looking in the opposite way from the last one introduced, looking right at the front gate and on towards the house on the Bruno Ranch. This land just across the fence in the picture is the land on which the grain had been planted, this fence marking the boundary line of the Bruno Ranch. These signs were not on the gate at the time we went there. We put the red "Stop" sign on while we were there. The box at the left of the gate wasn't there either, as I remember.

(Whereupon Defendants' Exhibit "E" was received in evidence.)

THE WITNESS: I don't remember those telephone poles shown along there in the photograph; but this is the back gate of the place and there was a road came along this corner. I recognize the house and the galvanized iron shed. There are two roads which come from the boulevard which runs between Perris and Elsinore, which leads to the back gate shown in this picture. One of these roads, the road that comes past there, that is marked "A," goes up around the corner there where the goat sheds are. It is a very light road and goes over there and meets the road from the back gate; and that road from the back gate continues up to one house that is a half or three-quarters of a mile away up on the hill. The goat shed is right on the northwest corner of the Bruno Ranch. I will mark it "L." By the dotted line on the map is indicated

(Testimony of William P. Clements.)

the lines on the Bruno Ranch; but the way it is indicated on the map there is five acres on each side. The goat shed was in the corner of the ranch at the fence line there. If the fence line is the edge of the ranch, it is in the corner. At the time I went there and made the arrest there were no goats in the goat sheds that I saw.

CROSS EXAMINATION

BY MR. BELT.

THE WITNESS: I first saw the defendant Connley when he was coming out of the house on the Bruno Ranch on January 21st between 1 and 2 p. m. I was getting out of the car not directly on the corner but a little past the corner of the house at the rear at that time. I was about 10 feet away from the door that he came out of. He had one hand on the screen door, or the door of the house, and was headed out, but was all the way out of the building when I saw him, only he still had hold of the door. He passed the time of day. I believe he said, "Good afternoon;" but I wouldn't be sure of the words; just a greeting. I was with Agent Alles. We were within hearing distance of each other. Verda was coming around the end of the house or coming out of the house, if I remember right. That was about 20 or 30 feet distant from where I and the other officer were standing. I told the defendant Connley that I was a federal officer and had information that there was a still on this place and would like to look around. He said, "I don't own this place." I told him I was going to take a look around the place anyhow. He said, "Well, come on in and look at the house." I said, "There is nothing in the house that interests me. I would like to look over the premises. From what I

(Testimony of William P. Clements.)

have information of it wouldn't be in the house." He said, "Well, come on in the house anyway." Up to that time I had said something to him about a still. I told him I had information there was a still on the place. I told him this when I told him who I was, that is, prior to entering the house. He said, "There is no still around here that I know of," and invited me into the house. After I got into the house I discovered something that had the semblance of a still. I did not have a conversation with Connley with reference to that appliance that I remember of; and that was all that I remember having happened in the house. I then turned around and went out the door, walked over to this distillate shed and saw these 50-gallon barrels of distillate there. And I also noticed this tank that was sunk out in front. Connley wasn't right with me but close to me, between the shed and the house, at that time. After I discovered this distillate I had a conversation with Connley. I came back and said to him, "Where is it?" And he says, "I don't know nothing of anything around here." When I asked him, "What is it?" I did not designate what I had in mind; but our conversation previous to that had been about a still. There was a very well defined road down the hill at the corner of the house. And I said, "Let's take a walk down here and see what this is." He was not under arrest at the time. We, that is, Agent Alles, myself and Connley, went down that road and the defendant Verda went about half-way down to the still and he stopped on the side of the hill. I do not remember that I had any further conversation with Connley until we got to the top of the still. There the defendant Connley said, "There is no use going

(Testimony of William P. Clements.)

down in here." He was at that time on the ladder in the still, probably on the first or second step of the ladder, with most of his body out of the hole. I was within three or four feet of him right at the top of the hole that went down into the still, and the other agent was right at the side of me if I remember right. Connley might have been standing on the top rung of the ladder when I so addressed him, with most of his body out of the hole, although he had started down the hole. I am positive that he had started down. Connley did not make the descent at his own request. I believe I said, "Let's go down in there and see what it is." And he went down without protest. Connley said there was no use of us going down in there; that we could fix this up right here and could all make some money out of it. I am sure that he told me his name was Walker when I shook hands with him, when I told him who I was. Eventually I got down to the bottom of the hole, and do not remember any further talk with Mr. Connley after I got down into the hole. I placed Mr. Connley under arrest in the hole but had no conversation with him other than that he was under arrest for possession of an apparatus and for possession of liquor. The still was not in operation when I went down there. The boiler was not hot. It was warm. It had a 40-horse-power boiler on it, a steam boiler, that they used to cook mash with. There was no fire under it at all. They were using oil for fires and that was turned out. When I drove up to the house on the Bruno Ranch I first saw the truck that I have testified about. It was a Federal truck. I got the license number. Had occasion to look at the registration and found it registered in the

(Testimony of William P. Clements.)

name of O. B. Ziegler, 151 North Avenue 20, Los Angeles. C-9518 is the 1929 license number. The next time I saw that truck it was standing behind the defendant Quirin's house. That was around 30 minutes later. But time traveled fast and I wouldn't be sure; there was so much doing all at once. I took the rotary off the distributor and have it here. I did that for the purpose of stopping the ignition. I went to Quirin's house first. There was nobody there. The house showed signs of being inhabited. I didn't search it. I just walked through it to see if there was anybody in there. And there was nobody in there, and I turned around and walked out and went to Elsinore. Subsequently I returned to the Quirin house and the truck was gone. At that time I found Herman Quirin, the defendant here, at the premises. I walked in the house; did not rap; did not ring a bell. The door was open and I walked in. I saw the defendant Quirin standing in front of the mirror shaving. He spoke first, saying, "What do you want?" I told him I wanted him. At that time I told him I was an officer of the law; told him I was a federal officer. I had my buzzer or badge on. The badge is marked, disclosing the fact that I was a prohibition agent. I had my badge on my vest under my coat. I told Quirin he was under arrest; that I was going to take him over to—I told him he was under arrest for a violation of the prohibition act. He said, "What are you going to do? Are you going to take me over there and put me on the spot?" I told him no; that I didn't want him if he wasn't guilty and, if he was guilty, I wanted him. He said he didn't know nothing about the place over there. Up to that time, as a matter of fact, nothing had been said by

(Testimony of William P. Clements.)

either of us as to that place over there except when he was talking about putting him on the spot some place. He eventually accompanied me; and I took him over to the Bruno Ranch. And eventually all of the defendants were gathered together there and subsequently incarcerated at Elsinore.

REDIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I made an effort to locate the owner of the Federal truck, of which I gave the license number, without any success. I did not find it in the possession of the man in whom it was registered. I have had experience trying to locate the owners of trucks under similar circumstances. I did not find anybody by the name of O. B. Ziegler. I looked for him. I have stated that I took part of the ignition. I am no mechanic on automobiles myself. But this rotary is a connection on the ignition. The rotary is on the distributor and it is impossible for a car to run without one, I know. I know and knew at the time I took it off. I have never seen the truck since. It disappeared. The truck was gone when I came back to the house.

REXCROSS EXAMINATION

BY MR. BELT.

THE WITNESS:

The appliance, which I have said resembled a boiler, was in a room on the north side of the house, inside it. It was in the second room of the house on a side with no entrance from the outside of the house. You would have to come through the bedroom, or through the dining room and the bedroom, to put this boiler in there. I couldn't

(Testimony of John Alles.)

say that this room is a closet. That house is a funny built house. It was a room I would say about 6x12 or something like that. I don't remember whether there was any window in it or not. I think there was a window right behind where this boiler was sitting. I had occasion to examine the boiler. I didn't examine the top and bottom very carefully but I did examine it. It had a bottom in it. I took possession of it. It is in my possession now at the Los Angeles Warehouse.

(Whereupon the rotor, or rotary, was introduced in evidence and marked Government's Exhibit No. 14.)

THE WITNESS: This boiler in front of the house was a round boiler about 30 inches wide. It was taller than it was wide, being between 4 and 5 feet tall. There was some kind of a connection at the top. I wouldn't be sure what it was, it having been two months since I saw it.

JOHN ALLES,

a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: My business is that of a federal prohibition agent. I am acquainted with the agent who just left the stand, having been working with him for a year. On the 21st day of January, 1930, I was with Mr. Clements on the ranch known as the Bruno Ranch in the afternoon some time past 1 o'clock. I saw the defendant Joe Verda and the defendant Walker at that time, seeing the defendant Joe Verda first. I was at the gate leading into the ranch at the fence, that is, the gate coming in

(Testimony of John Alles.)

from the north, the one marked "D," when I first saw him. We were at that time north of the gate, that is, outside it. At that time Verda was on the east side of the house marked "E," slowly walking or ambling toward us. He was waving at us with a red handkerchief. When I observed that we were coming up through the lane to the house. We traveled, I imagine, about 50 or 60 feet away from the house up to the time we came to him. We were driving in a car, Clements and myself, in a Chrysler coupe. When we came to where Verda was he was in the left-hand track. He was in our way. We had to turn out of the ruts or the tracks to miss him. He got in our way and, in order to avoid striking him, we had to go off the road. He stood there waving us down and we had to turn out. We drove past him and stopped the car about on the corner of the house marked "E," on the map; and Mr. Connley came up. There was no immediate conversation with Mr. Verda. We talked to Mr. Connley first. Mr. Clements spoke to Connley. I overheard the conversation. He said, "Hello," or something; and I said, "Hello." And we shook hands. And I believe Mr. Clements asked him who the ranch belonged to, or whose place it was. And Mr. Walker says, "Why, I am the only one here," outside of the defendant Verda. And it appeared to me the place was called the Walker Ranch at that time. Mr. Clements then said, "Well, we are federal officers," and pulled out his badge; and I pulled out mine and told him we had information there was a still there and wanted to look the place over. And he says, "Okay. Come on and look around." Mr. Verda went to the door and says, "Come on and look in the house." So we went in the house. In

(Testimony of John Alles.)

a little room off to one side we found this copper. I would say it was the top of the column to a still. I have seen plenty of stills before, a good many of them. A column is a portion of a still, that is, the top extending up above the cooker itself, which it vaporizes through. It is not what is known as a water heater that is usually connected with a stove. This was a copper apparatus. It was built on a boiler top, with little pipes fitting through the center, allowing the vapor to rise through it. When I found that I said, "Well, where is the rest of it?" I was addressing either Connley or Verda at the time they were there together. Their answer was, "That is all there is. There isn't anything here. I never saw that before." Mr. Clements went out of the house about that time and I took my time following out, looking around the house a little. I asked Mr. Verda if he lived there and he says yes, he slept there. And he says, "This is my bed." It was a bed, or I would say it was a dining room, where there was a table and a cook stove, and a room to the east of it. When Mr. Clements returned toward the house from the distillate shed there we met just outside of the door; and Mr. Clements said, "Well, let's go down here and see what is down here." There was a trail where you might say they walked down from the house, and there was a road where cars and vehicles would go down. He said, "Let's go down here and see what is down there." And we walked down and Mr. Connley stayed right with us. Mr. Verda didn't feel inclined to go down. He stopped about half-way down. We told him to come on down with us and he just stood there and looked at us. And, after I told him to come down with us a couple of times, Mr.

(Testimony of John Alles.)

Connley says, "All right; come on down." So he gradually walked down with us. By that time we were at the top of the hole. I don't remember exactly if I went down first. I think I did. And Mr. Connley started down second and Mr. Clements was still on the top of the hole. And I made some remark about, "Gee, it is a big one." And Mr. Connley said, "Well, we can fix this up right here. There is no use going any further." Mr. Clements said, "Well, do you know who owns this or who it belongs to?" He says, "Well, I don't know. But I can get hold of the owners and we can straighten it up right now; and we need not go any further." And we went out of the hole then and looked around. And two fellows out there in the field started walking off of the premises. At that time we were coming out of the hole. Mr. Verda was within the enclosure, approximately 10 or 15 feet away from the hole. He didn't come very close to us. Now, we got out of the hole there, climbed out of it up the ladders. And in the meantime Mr. Clements told the two defendants they were under arrest and started back to the house and went on through the house and started tracing pipes out of this reservoir. When I came out of the hole I observed Verda. He was standing about 10 or 15 feet away from the hole, not doing anything at that time. We, Connley, Verda, Clements and I, went back to the house and looked in that stone or cement reservoir and examined a little dug-out place with some 2x4s there that Mr. Connley was showing us he was working on to build a water tank that was there; and he was down there for that. And I asked him how long he had been working

(Testimony of John Alles.)

there, and he thought a while and thought it was a matter of 10 days. And Mr. Verda said he had only recently come there, a matter of about four days. So he said Frank Ramiro, a Spanish man, had hired him to come down there and keep the place up. He said he was supposed to keep the place in ship-shape and take care of odds and ends around there and feed the mules and also to be paid \$30 a month. And we asked him if he had been paid any of it yet; and he said Ramiro had advanced him \$3 to buy eats with so he could live there. And we asked him where he met this man and he said on Main Street in Los Angeles. He was out of a job and pounding the sidewalk. About that time Mr. Clements left and I was left in charge of Mr. Verda and Connley. I then talked to one and the other, sometimes both collectively. Mr. Verda asked me if I wouldn't leave him go. He said he didn't have anything to do with it. He didn't know it was there and had no connection with it. And I told him I couldn't leave him go. And Mr. Connley, sometimes called Walker, then chimed in and said, "No; he hasn't got anything to do with it. He is just a fellow around the house here." And he said, "You have got me. What more do you want? You don't need a dozen of them. That is what I thought it looked like when two of you came up here. It didn't look like much of a pinch with only two of you. And I thought it would be a good chance to get down to business and talk this over." I don't know how it came up but I told him I was only making \$200 a month. And he says, "You don't mean to tell me you are working on a job for \$200 a month if there isn't a chance to make some

(Testimony of John Alles.)

dough on the side?" He says, "Everybody from the White House on down is getting theirs. You might as well get yours. It looks pretty good only two of you coming up here; and we can get together on that." And I made the statement that Mr. Clements had better get back from Elsinore pretty quick or else the banks would close. And he said, "That don't make any difference;" that they could get all kinds of dough. About that time there was a small gasoline engine running off at the bottom of the slope from the north of the house, pumping water. The engine was running and Verda—I never could understand him half the time anyway—mumbled something about going down there and shutting it off. And Mr. Walker asked me if he could go down and shut it off, and I told him yes, he could go down and shut it off. He went down to shut it off. I imagine it was about 100 feet down to that pump. The house was between the pump and the still. The house is on the south side of the still, angling off to the east, kind of angling southeast from the house and this pump was directly north from the house. In the meantime these two men that were out in the field there were so far distant I didn't know who they were. I couldn't recognize any of them or anything. They started up off the premises, as I said before, and started up over one of these hills. And they sat down on some rocks up there and watched us standing there talking. When Mr. Verda went down there and shut off this engine he again pulled this red handkerchief from his pocket and started waving it. When he commenced waving it he was facing these two men and at the same time

(Testimony of John Alles.)

kind of keeping his eye on us. And I told him it wasn't necessary for him to do that because there wasn't any chance of us getting those two men. Anyway when he waved that handkerchief these two guys immediately disappeared over the hill. As to how they got over or at what speed they got over, they left right now. I said to Verda that it wasn't necessary to signal that way. He said, "I wasn't signaling." When I told him that he immediately blew his nose with his handkerchief. In a very little time after that Mr. Clements came back with the Chief of Police Barber and the defendant Quirin. The defendant Quirin was dabbing a little blood spot on his chin. It looked like he had cut himself shaving. And I asked Mr. Clements where he got him and he said down at the house on the highway there. Then Mr. Clements and Mr. Barber went down into the still pit. I stayed in the house with Mr. Walker and Verda. And Verda again approached me about leaving him go while Mr. Barber and Mr. Clements were down in the hole. And I told him I couldn't let him go. He says, "Please. I will run over the hill and I will be gone just like that." I told him I couldn't leave him go. And Walker says, "There is no use talking to him; that is the best he can do. He can't let you go. It looks like we are pinched." Mr. Clements and Mr. Barber then came back out of the hole about that time and I made another trip down there and looked it over and studied a few angles of it.

(Counsel for all of the defendants announced that they did not desire to cross-examine this witness.)

(Testimony of Richard Kelly.)

RICHARD KELLY,

a witness on behalf of the Plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I have been sick abed for the last five or six days and just got out of a sick bed to come over here.

THE COURT: Mr. Kelly has bronchitis and that may account for his condition of voice.

THE WITNESS: I am the proprietor of the boiler works located at 557 Mission Road, this city. I buy and rebuild and sell boilers and tanks. I have been in business about 30 years. Am acquainted with Pete Valero, who has worked for me for about a year. He was so working in the month of December, 1929.

Referring to March 7, 1929, I at that time sold to one P. Walker a boiler.

Exception No. 2.

MR. GRAHAM: Just a moment. That is objected to on the ground it is entirely without any of the issues of this indictment. The indictment alleges the conspiracy was conceived six months—

THE COURT: That doesn't make any difference about that. Proceed.

MR. GRAHAM: Exception. May it be understood that our objection and exception goes to all this evidence as to what occurred in March, 1929, without restating it each time?

THE COURT: Yes; certainly. Go on.

THE WITNESS: The man that bought that boiler came to my place of business in March of 1929. He was

(Testimony of Richard Kelly.)

a large, heavy man. There are twenty or thirty people in every day talking about boilers and— Referring to your question as to whether a man by the name of P. Walker came to my place of business either in the month of March or July, 1929, and bought a boiler, all those things are of record in our books. Our books are here. I am selling boilers every day. I remember selling a man a boiler by the name of Walker. But they come in every day. I had the transaction with that man personally. He was a large man, is about all I can remember of him. I should say his age was about 30; somewhere around that. He would weigh about 200 pounds; somewhere around that. I wouldn't say he would probably weigh a little over that. After this date I did not sell this same man, P. Walker, another boiler.

Answering your question as to whether I obtained for this man Walker a Thompson boiler, I will tell you how that happened. They wanted terms on a part of the payment of the boiler and they wanted me to arrange to get it, that is, those people that got the boiler did. I think it was in January that these men came in and made arrangements to purchase a Thompson boiler. But we have records concerning that transaction.

THE COURT: Have you got the records here?

MR. OHANNESIAN: We have.

THE COURT: Let him refresh his memory by these records.

(At this time the witness was shown a document characterized by the Assistant United States Attorney as a photostatic copy of a statement upon the letterhead of the

(Testimony of Richard Kelly.)

Thompson Boiler Works, and asked the witness if he had ever seen it before.)

THE WITNESS: I can't see this but I can tell you about the transaction. I can't read it. I can't see it. Anyway, I can tell you all about it without this. These people wanted to get a boiler, that is, two or three people. The man known to me as P. Walker was one of them. He did most of the talking, I guess. He said he wanted this boiler and he wanted to get time on part of it, and he wanted me to arrange to let him have the boiler and pay what he could on it and have a contract on the balance. But Thompson wasn't willing to let the boiler go that way. So I dropped out of it. And they bought the boiler and paid cash for it and I didn't have a thing to do with it. The boiler wasn't charged to my account. They paid the Thompson Boiler Works cash for it. I did not have a thing to do with it. I didn't get a penny out of it or didn't have anything to do with it.

Q How come that upon this photostatic copy that his Honor has upon his desk there it appears to be charged to the Kelly Boiler Works?

THE COURT: It wasn't charged to them. It was billed. It is marked as having been paid in cash.

MR. BELT: Further objection is made that the witness has failed to identify the exhibit as offered.

THE COURT: The witness first said he had the records showing the transaction, but now he says the transaction didn't occur at all. Now, which is right?

THE WITNESS: We have no records concerning this transaction at all. I never had possession of the boiler; didn't own it and didn't sell it. I took them over

(Testimony of Richard Kelly.)

to the Thompson Boiler Works, though, that is, I took the bunch over there. As to whether or not cash was paid by Walker and his companions, I wasn't present. I found out it wasn't going my way and I had other business to attend to. So I didn't pay any further attention to it. This all occurred in January of this year, I think shortly after New Years. I think the date is on that contract there. I think this is the date that is on this sheet. That is the time that this transaction took place. I haven't read it at all. If that is the bill, that is the date. When I am well I can see well enough with my glasses on. I use just ordinary glasses. I am nearly 68 years old. I have my glasses here.

Q. BY MR. OHANNESIAN (Referring to the bill which had been handed to the witness): What is this here?

THE WITNESS: I don't know anything about it. I don't think I have ever seen that paper before. I don't know what transaction that bill refers to. I notice that it is billed to my firm, the Kelly Boiler Works. I take it for granted that that was the date that they got the boiler. As I said before, I didn't have a thing to do with the purchase of the boiler. They bought it themselves because I haven't got any records in my books concerning it at all. I don't know anything about that paper. I notice that the paper bills a boiler to the Kelly Boiler Manufacturing Company. My company did not buy a boiler of the Thompson people on that occasion. It was probably billed to me because they started in to buy the boiler on contract and have it charged to me; and Thompson wouldn't let it go that way. So I just dropped the whole thing and didn't

(Testimony of Richard Kelly.)

have anything more to do with it. I don't remember now whether while I was there negotiating with the Thompson people on that occasion anybody undertook to make out a bill to me. This man Walker who went with me on that occasion was about 30 years old and a large man, weighing 200 pounds or over, and was smooth shaven as near as I can remember. I don't believe I saw him with his hat off. All of the other transactions I had with them are all on our books. Any other deal which we had besides this is all on our books. They got some pumps later, I think, and then returned them again. I don't remember whether we sold to one P. Walker on August 30th three lubricators. All of the transactions are on our books, which are here in court. You can get all of that in the books. I wouldn't carry that in my head. My bookkeeper is here as a witness. She can tell you all about that. I don't pay any attention to the books at all. The book which you have just handed me is my book all right and all entries for the month of August, 1929, to and including November and December, 1929, are in that book and they refer to items sold to P. Walker. If it is in there, it is all right. I think the boiler that these men wanted from me, which they finally got from the Boiler Works, was about a 30-horse-power boiler, made by Thompson. I suppose it carried their name on the boiler. I don't remember the dates when Pete Valero worked for me in the month of December, 1929. In the month of December he went to their place. I didn't know where he was. I instructed him to go. He went to their place. I don't know where it was. They picked him up and brought him back. Some of their drivers picked him up. I know they

(Testimony of Richard Kelly.)

wanted some repairs done; the Walker outfit wanted it. They applied for me to get somebody to do some work for them. I don't remember now who it was that applied. There were four or five of them. There were several of them in there at different times. I don't remember which ones it was ordered this work done. It was before I took these parties over to Thompson's that I had this pump transaction with them. So when Walker came to me after a boiler I had seen him before several times. He did not tell me where the boiler was to go or where the pumps were to go.

Exception No. 3.

MR. GRAHAM: I move that all of the testimony of this witness be stricken on the ground there is no connection shown between these transactions and any of the defendants in this case.

THE COURT: Overruled at this time. You may renew the motion later if the matter is not connected up.

MR. GRAHAM: An exception.

(Counsel for all of the defendants announced they did not desire to cross-examine this witness.)

CONTINUED DIRECT EXAMINATION BY MR.
OHANNESIAN.

Exception No. 4.

MR. OHANNESIAN: At this time, may it please the Court, I am somewhat surprised at the testimony given by the witness in some respects; and, in order to call his attention particularly to a transaction had with Mr. Spencer relative to this matter, I want to ask him if he did not have a talk concerning this matter, or rather

(Testimony of Richard Kelly.)

an interview, with Mr. Spencer, the government investigator, about this boiler. Did you not?

MR. GRAHAM: I object to that.

THE COURT: He may answer yes or no.

MR. GRAHAM: I want to state my objection, your Honor. It is objected to on the ground it is an attempt to impeach his own witness.

THE COURT: Overruled. Proceed.

MR. GRAHAM: An exception.

THE WITNESS: Mr. Spencer spoke to me concerning this boiler and its sale and movement and the sale of other articles, such as tubings. And I attempted to tell him truthfully what I knew about it. I recall that Mr. Spencer (whom the witness identified as being a man who stood up in the courtroom) spoke to me concerning the sale of these boilers and other articles to Walker. That conversation took place about two weeks ago in my yard.

MR. GRAHAM: Is it understood that this is all subject to our objection?

THE COURT: Yes; certainly.

THE WITNESS: I don't think anybody else was present other than myself and Spencer; that is, when he came over there first there was some one who was I suppose an officer with him. The second time there wasn't. It was about two weeks ago when he came there the first time and the second time was four or five days later. At that time he was alone.

Exception No. 5

Q BY MR. OHANNESIAN: Did that Mr. Spencer ask you whether or not you had sold a boiler in July,

(Testimony of Richard Kelly.)

1929, to Mr. Walker, alias Mr. Connley, and you said yes?

A No. I—

THE COURT: Wait a minute. Is there any objection to that?

MR. GRAHAM: That is objected to, first, on the ground it is leading and suggestive and, second, on the ground it is an attempt to cross-examine his own witness and to impeach his own witness and, third, on the ground that no mention has ever been made here about Mr. Connley. The testimony has all been about P. Walker.

THE COURT: In view of the character of this witness' testimony and his slowness to answer the questions and the answers as given to the questions sometimes, the court will permit the government not to impeach this witness' testimony, which, of course, is objectionable, but to refer this witness to statements that he may have made heretofore about the same transaction for the purpose of now refreshing his memory. The witness comes on the stand and says he is ill and his testimony, speaking discreetly, is very vague. His memory can't be refreshed by the recall to him of statements. Of course it has to be pretty carefully put.

MR GRAHAM: An exception.

Exception No. 6.

Q BY MR. OHANNESIAN: Following the instructions of the court and not by way of impeachment of the witness, only to assist you in recalling the conversation that you had with Mr. Spencer—

THE COURT: No, not for that purpose; only to refresh his memory so that he may testify from a refreshed memory at this time.

(Testimony of Richard Kelly.)

MR. OHANNESIAN: Very well.

Q With that in mind, do you recall the conversation that you had with Mr. Spencer concerning these matters?

MR. GRAHAM: We object to that on the ground that is not the fact that is material, whether he had the conversation.

THE COURT: Overruled. We need some preliminary steps always before we can walk. Go on.

MR. GRAHAM: An exception.

THE WITNESS: Well, I don't remember the conversation I had with Mr. Spencer concerning these matters. He asked me about buying this first boiler, I think; and I told him all of the records are on the books. I don't carry these dates and books in my head. I have a set of books for that purpose. I don't think that at that time there was any conversation relative to the purchase of the Thompson boiler. If there was I just simply told him I didn't have anything to do with it. I had a conversation concerning a Thompson boiler. I don't remember whether the Thompson boiler was mentioned or not. I thought it was the first boiler they got you were trying to find out about. There was a first boiler. They did buy a boiler from me. I sold tubings to Mr. Walker for the first boiler at a later date. They came and got these tubings themselves, that is, those people that were having the work done came. I don't know who they were. They had three or four drivers that used to come by and pick stuff up. Some of the drivers got it. I don't recall who ordered the tubing for the first boiler but I have a book

(Testimony of Richard Kelly.)

record for that. Everything is in the book. I was present when the tubings were sold for the first boiler. I am the one that sold it. I don't remember what the man looked like to whom I sold it. There were three or four of them in there off and on. I don't know which particular one ordered the tubing. I don't remember the date when I sold a certain number of tubings for the first boiler but I remember I sold them some tubing. It is in the book. I don't know whether I recall or remember the appearance of the man to whom I sold them. There were two or three of them came in there. They didn't give any names at all. All of it was carried in the books under the name "P. Walker." As I said before, P. Walker, under whose name I carried these items, was a heavy set man, weighing something like 200 pounds or more. From the very beginning of these transactions they were carried on the books in the name of P. Walker, which was the only name we had. I got that name at the beginning of this business with them and everything they got was charged to P. Walker. We didn't charge anything to him until they ordered the first boiler. That was when the account started. This first boiler was about a 30-horse-power boiler, not a Thompson boiler. That was bought about a year ago. I don't remember the date. It is all on the books there. There were two or three of them in there at the time of the negotiations for that boiler. One of them called himself P. Walker. I didn't hear the names of the others. I don't remember whether the same man who called himself P. Walker came in afterwards and ordered the tubings and fittings and pumps and other

(Testimony of Richard Kelly.)

things like that. I only seen him a couple of times. That is how we got our account started under the name of P. Walker, because he ordered this boiler, and everything else went on the book under that account. They paid cash but we made the entries on the books under the name of Walker. They always paid cash. They didn't always pay cash at the time but they would pay it later. They didn't get any credit to speak of. When they got the boiler they paid for it; and those other little items there wasn't any of them that amounted to very much. They usually came in a few days later and paid it. A man by the name of Walker was one of them who spoke to me concerning the Thompson boiler.

(Counsel for all of the defendants announced they did not desire to cross-examine this witness.)

(Whereupon the witness was excused, this being on March 19, 1930.)

(On March 25, 1930, during the examination of Albert Kruse, a witness called on behalf of the plaintiff:)

THE COURT: I don't see why this court shouldn't order that man Kelly in here again.

(The jury was then excused and asked to retire. After the jury had retired the following proceedings were had.)

(After a further discussion:)

THE COURT: I was very well satisfied that Mr. Kelly was determined the other day not to make a witness in this case if he could help it.

MR. OHANNESIAN: I didn't want to bring this matter up and would not have unless it was suggested by the court, because I thought it might in some way interfere with the due progress of this case. I will

(Testimony of Richard Kelly.)

take it up at a later date. But I am willing to abide by whatever ruling your Honor wants to make. I do think Mr. Kelly ought to be brought before this court.

THE COURT: Well, when it comes to the question of identification, certainly Kelly ought to be able to help better than this man.

(After further discussion, which is set out at pages 163 to 166 of this bill of exceptions, transcript pages)

THE COURT: Telephone Mr. Kelly and tell him he is to come up without further delay. We will not hold this court up.

THE COURT: Can anyone inform the court as to whether Mr. Kelly is on his way here in response to any telephone message, and, if he is, how long it will take him to get here

(Whereupon, Mr. Kelly appeared in the courtroom.)

THE COURT: Bring him in here. Mr. Kelly, come forward, please. Take a seat there.

(Whereupon, on March 25, 1930, the following proceedings took place in the absence of the jury:)

Exception No. 7

Q BY THE COURT: Mr. Kelly, when you were on the stand the other day the court told you that you were temporarily excused, but that it might transpire that he would call you back, do you remember that?

A Yes.

Q You do remember that. Since you have been here, since you have testified, testimony has come to this court very clearly and in a good deal of detail, that you had business transactions with the man known to you as Walker, a good many times; that on one occasion, with

(Testimony of Richard Kelly.)

reference to a boiler which has been identified as a dismantled boiler on the Bruno premises, which had been bought from you some time prior to last January, you had ordered one of your workmen to rearrange and re-set that boiler on its base because of the direction of this customer, whose complaint was that the base of the boiler and the riveting of it to the base had not been sufficiently protected by cement to keep the heat from disturbing the riveting. I am free to say to you and do say it with some emphasis that we were not satisfied with your conduct on the witness stand the other day. It was quite obvious, not only to the court, but to those who witnessed you testify, that you were minded not to be frank. The episode of your glasses, particularly was convincing that you were attempting to withhold from this jury and from this court information which you obviously had. At least, you were attempting to thwart the production of the truth. Now, developments this morning convince the court that you know a good deal more about this matter than you have hitherto testified to; that you are, to say the least, able to identify the man Walker, known to you as Walker, a man whom your records show had been a customer of yours covering a period of time, as the man who came back and had your workman Kruse change the setting of the boiler. And we expect you to get your memory in shape to identify that man if he is in the courtroom. Do you understand what the court means and says?

A Yes, sir.

Q How about it?

MR. BELT: If your Honor please, at this time—

(Testimony of Richard Kelly.)

THE COURT: You can take your exceptions after I get through with Mr. Kelly. I don't care to have Mr. Kelly diverted from what the court is saying.

MR. BELT: I would like to have the record show my objection.

THE COURT: You can make your objection when the time is opportune. These interruptions are disconcerting.

MR. BELT: I think now is the opportune time for the objection.

THE COURT: Now, Mr. Kelly—

MR. BELT: An exception.

Exception No. 8

Q THE COURT: Don't you think you could identify the man with whom you had that transaction?

A I don't know. I haven't got very much of a memory for faces—

Q Do you mean to tell this court that you can't identify a man with whom you had a dozen business transactions regarding two boilers within the last 7 or 8 months?

MR. BELT: I object to the form of the question on the ground it is attempting to intimidate this witness. This witness has heretofore appeared before this Honorable Court and has testified to the very best of his knowledge and authority, and the remarks of your Honor at this time can have absolutely no other effect.

THE COURT: This court doesn't need your help or your advice, Mr. Belt.

MR. BELT: I know, your Honor, but I am repre-

(Testimony of Richard Kelly.)

sending two defendants here, and they are entitled to some protection.

THE COURT: You have your objection in the record. We will proceed with this witness.

MR. BELT: An exception.

Exception No. 9.

Q BY THE COURT: Do you mean to call this court—

MR. BELT: I would like to have the record show, also, if your Honor please, that the court in addressing this witness struck the bench with his fist.

THE COURT: You may have that. You may get a movie-tone in here and put it in a movie, if you want to.

MR. BELT: An exception.

Exception No. 10.

Q BY THE COURT: Do you mean to tell the court you can't identify this man, P. Walker, who had frequent business transactions with you regarding two boilers within the last seven or eight months?

A I only met this man supposed to be Walker two or three times.

Q You met him two or three times? You sold him the boiler first, didn't you, an upright boiler?

A Yes.

THE COURT: An upright boiler?

A Yes.

Q And you had it set on this base in your plant, didn't you?

A No, sir.

Q Beg pardon?

A No, they came and got it and set it themselves.

(Testimony of Richard Kelly.)

Q The base was fastened to the lower part of the boiler in your plant, wasn't it?

MR. BELT: If your Honor please, I object to that as assuming a fact not in evidence.

THE COURT: Let him answer.

Q Wasn't it?

MR. BELT: Exception.

A Why, they took the boiler out there, and afterwards they came back and they got another base for it, as I remember it.

Q BY THE COURT: You remember that?

A Yes.

Q And you remember that there was some complaint in your office that the riveting of the base was not sufficiently protected by concrete, don't you?

A I think they had to change the position of the ring that held the base in place.

Q That was done in your plant, wasn't it?

A Yes.

Q And the boiler and base were there then, weren't they?

A No, just the base.

Q Just the base, the ring on the base was changed?

A Yes.

Q At the suggestion of this customer?

A Yes.

Q And Mr. Kruse did it, is that right?

A No, Mr. Kruse—there was twelve men working over there, and I don't remember who did the work.

Q You remember it was done under your direction?

A Yes.

(Testimony of Richard Kelly.)

Q You had a talk with P. Walker respecting that didn't you?

A Yes, sir.

Q And that was when?

A Well, I don't remember the dates; I can't remember the dates at all.

Q Well, you remember that it was the first boiler, the upright boiler, don't you?

A Yes, sir.

Q And then some time afterwards he came back to buy another boiler and you took him to the Thompson people, didn't you?

A Yes, sir.

Q Personally?

A Yes, sir.

Q You accompanied him to the Thompson people?

A Yes, sir.

Q And then he bought tubing of you in various quantities, didn't he, and other fixtures?

A Just one lot—

Q He was there how many times?

A He wasn't there all of those times. He was there about two or three times altogether.

Q And he dealt with you?

A Yes, sir.

Q Now, are you able to identify him if you see him?

A No.

Q What is that?

A No, sir; I couldn't tell for sure.

Q I don't care whether you can tell for sure. Are you able to make a tentative identification?

(Testimony of Richard Kelly.)

A I could tell whether he looked like him or not. He was a large man.

Q Have you got your glasses with you?

A Yes.

Q Will you need your glasses for identification purposes?

A No, I only use them for reading.

Q Just for reading. Then you step down within the bar here, and walk around among the people and see if you can identify that man known to you as Walker, who had those transactions with you.

Exception No. 11.

MR. BELT: At this time I want to renew my objection to the whole of the proceedings on the ground stated in my first objection.

THE COURT: Very well. You have your record. Proceed.

MR. BELT: And I further object to the attempted identification on the same ground.

THE COURT: Proceed, Mr. Kelly.

MR. BELT: Exception.

MR. HERRON: Exception.

Exception No. 12.

THE COURT: You can begin at the blackboard and swing all around inside of the bar; don't go outside of the bar; make a circle and pass the ladies, clear around to the jury box. You can go closer, if you desire.

MR. BELT: Now, if your Honor please, I don't want to appear argumentative or anything of that character, but in directing this witness to make the inspection, your Honor directed him to make an investigation

(Testimony of Richard Kelly.)

of the persons inside of the rail. You did not ask him to go outside.

THE COURT: Let's see. There are 23 persons inside of the railing besides counsel. That is enough.

MR. GRAHAM: If the court please, I would like to call the court's attention to the fact that some of the people involved in the case here are outside of the railing.

THE COURT: Well, we will try the people inside of the railing first.

MR. GRAHAM: Exception.

Q BY THE COURT: Do you see anybody inside of the railing that, in your judgment, appears like the man who had these several business transactions with you?

A Well, I wouldn't say that I could identify any of them, your Honor.

Exception No. 13.

Q You see nobody that resembles that man?

MR. BELT: If your Honor please, I again object to the form of the question. It can have positively no other effect upon this witness than an attempt to intimidate him.

THE COURT: Well, you are getting in your objections.

MR. BELT: Exception.

Exception No. 14.

THE COURT: Proceed, Mr. Kelly.

MR. BELT: It appears to counsel, if your Honor please, that there should be some limit to this.

(Testimony of Richard Kelly.)

THE COURT: The Court is of the opinion that this witness is bound not to be frank. He has convinced the court of that.

MR. BELT: I object to that, if your Honor please.

THE COURT: And he is bound to come through, if it is possible.

MR. BELT: He has answered honestly, to the very best of his ability.

THE COURT: He does not need your help, Mr. Belt.

MR. BELT: I know, but my clients need my help, if your Honor please.

THE COURT: Mr. Belt is a portly man. Does he resemble him?

A What is that, your Honor?

THE COURT: Does Mr. Belt resemble the man who had the business transactions with you?

Q BY MR. BELT: In your opinion, Mr. Kelly, how much do I weigh?

THE COURT: Mr. Kelly is now answering the court's question.

MR. BELT: Pardon me.

A No, I never seen this man before that I remember of.

Q BY THE COURT: What is that?

A I say I never seen this man before that I know of.

THE COURT: Now, Mr. Kelly, walk over here where the bailiff sits and you go around the circle, clear to the jury box and examine the 15 or 20 or 25 individuals that sit up along against the bar, and see if you can find the man that you had business with, or a man who looks like that man.

(Testimony of Richard Kelly.)

MR. HERRON: It may be understood, I take it, if the court please, for the purpose of the record, that we are understood to have made the same objections to each and every question.

THE COURT: Yes, but each time you object you interrupt and disturb the thread.

MR. HERRON: Well, we won't object any more, if the record may show this, that we object to each and every one of these questions.

THE COURT: In whose behalf are you objecting?

MR. HERRON: On behalf of all of the defendants, if your Honor please.

THE COURT: Excuse me. We will not hear your objection, except on behalf of the clients that you represent. Mr. Belt is perfectly capable of taking care of his objections.

MR. HERRON: If your Honor please, at the opening of the trial—

THE COURT: It makes no difference. Mr. Belt is now taking care of his clients.

MR. BELT: If your Honor please, in view of the fact that I have interposed several objections which were overruled, I take an exception. I ask that each question that your Honor has asked will be deemed to be objected to and an exception taken.

THE COURT: That will be satisfactory. Nobody else need to get on his feet and object.

MR. HERRON: With due deference to the Court, I wish to say that I join in that objection, and exception.

THE COURT: Mr. Kelly, kindly follow the Court's directions. Move around in the circle on the other side

(Testimony of Richard Kelly.)

of the table and look at each individual and see if you can see the man with whom you had this transaction, or a man that looks like him.

A Well, I couldn't say that there was anybody that I can—

Q Wait until you sit down before you talk. I can't hear you.

A I wouldn't say that there was anybody there that I could say for sure.

Q I am not asking you whether you can see anyone there that you can say for sure. Do you see anyone there that resembles him, in your judgment, that you saw when you were down there? A. Well, the nearest one down there that I can say that I think looks like him—

Q Which one?

A That one (indicating).

Q Well, that doesn't mean anything. Which one? Where is he sitting?

A He is sitting next to that lady there.

MR. GRAHAM: I couldn't hear that. Will you read that answer, please?

THE COURT: He said he was sitting next to the lady.

Q Next to the lady with the scarf?

A Yes.

Q That looks like the man that you had the dealings with?

A He looks more like him than anybody else that I see here.

Q What is your judgment; is it your best impression that was or was not the man?

(Testimony of Richard Kelly.)

A Well, I couldn't say for sure.

Q I am not asking you whether you can say for sure. What is your impression about it?

A Well, all I can say—

MR. BELT: Now, if your Honor please—

THE COURT: Now, this witness is about to answer, and you are interrupting.

MR. BELT: All right. If your Honor please, if you will bear with me for just a second. Your Honor asked him a specific question, and he gave you an answer that possibly could not be construed in any other light. He said there was only one man in the room that resembled the man that came to the Kelly plant, and he pointed out the defendant Connley. Now, any other questions along that line, in the opinion of counsel, would be surplussage, and would not affect anything at all.

Q BY THE COURT: Mr. Kelly, what is your impression; was this man or was he not the man with whom you had the transaction,—not for sure, but your impression now?

A Well, I would say he looks more like him than anybody else I see down there.

Q Well, does he look like him?

A Well, in a general way, yes.

Q In a general way he resembles the man that you had these several transactions with, is that right? Is that your answer?

A Yes, sir.

THE COURT: Very well. Bring in the jury.

Exception No. 15.

MR. BELT: Now, Mr. Kelly, isn't it a fact that the only way that the defendant which you have pointed out

(Testimony of Richard Kelly.)

here resembles the man that called at your place of business is from the fact that he is portly, heavy set, in other words?

A Yes.

MR. OHANNESIAN: Now, may it please the court, at this period I don't understand that there is any cross-examination necessary, because this is a matter outside of the trial of the case, and has not bearing upon the trial of the case, and it is also understood—

THE COURT: Yes.

MR. OHANNESIAN: (Continuing) —that it is in the absence of the jury, and is not a part of the record.

MR. BELT: Do I understand—

MR. OHANNESIAN: Just a minute.

MR. BELT: I beg your pardon.

MR. OHANNESIAN: At this time I want the record to show that all that has transpired since the absence of the jury is not a part of the record, and as such will not be made a part of the record.

MR. BELT: To which we object.

THE COURT: The record will show that this has been done in the absence of the jury.

MR. OHANNESIAN: And not a part of the case.

THE COURT: And not a part of the case, so far as the jury has the case.

MR. HERRON: And the objections of the defendants are that they are foreclosed the opportunity of examining the man along the same line that counsel is examining him. May the record so show?

THE COURT: You have enough, gentlemen. You have got your record preserved.

MR. HERRON: If the Court please—

(Testimony of Richard Kelly.)

THE COURT: You will have your opportunity of examining.

MR. HERRON: We ask, if the Court please, that we be given an opportunity to examine out of the presence of the jury, and take an exception with respect to the refusal so to permit us.

(At this point the jury returned to the courtroom.)

THE COURT: You may sit down.

MR. HERRON: Exception.

THE COURT: Do you want to question Mr. Kelly?

MR. OHANNESIAN: No, your Honor, we have no questions to ask this witness.

MR. HERRON: We have none.

THE COURT: The court will accept that responsibility, gentlemen, with pleasure, as a matter of necessity.

Exception No. 16.

Q BY THE COURT: Now, Mr. Kelly, you testified the other day that you had several business transactions respecting the sale of a boiler to a man by the name of P. Walker, do you recall that?

MR. BELT: Now, if your Honor please, at this time I would like to object to any questions being asked this witness that your Honor has asked of him out of the presence of the jury.

THE COURT: The court has not yet undertaken to do so. When the court undertakes to do that, why, then you may make your objection.

Q Do you remember that?

MR. BELT: On the same grounds, if your Honor please, as the objections taken outside of the presence of the jury.

(Testimony of Richard Kelly.)

THE COURT: Mr. Kelly—

MR. BELT: Exception.

THE COURT (Continuing): In order to keep your thoughts straight after this interruption, the court will have to repeat the question. This is the question:

Q Do you recall testifying the other day that you had several business transaction with a man by the name of, or who gave you the name of P. Walker, who bought a boiler of you and some other material, shown by your books, and whom you sent over to the Thompson Works for a boiler? Do you remember that?

A Yes.

Exception No. 17.

Q Tell the jury whether you see in the courtroom, a man who resembles this P. Walker with whom you had these transactions.

MR. BELT: I object to that question on the same grounds stated in my previous objection.

THE COURT: Very well.

MR. BELT: Exception.

THE COURT: Your objection is noted. Answer it.

A. I am looking at the people—

THE COURT: Louder, please.

A I am telling the jury I looked at the people around the jury there.

THE COURT: Around the courtroom, you mean.

THE WITNESS: Around the courtroom, yes, and I only see one that I would say resembled this man that went by the name of Mr. Walker. I wouldn't say that was him for sure, but—

THE COURT: Which man is it?

(Testimony of Richard Kelly.)

THE WITNESS: This man sitting over there with the red necktie.

MR. BELT: We stipulate he is pointing to the defendant Connley—I will withdraw that.

THE COURT: You mean the man sitting next to the lady with the scarf on?

THE WITNESS: Yes, sir.

THE COURT: Let the record show the defendant indicates the Defendant Connley alias Walker. Cross-examine.

MR. BELT: No cross-examination.

MR. GRAHAM: No questions.

THE COURT: That is all, Mr. Kelly.

MR. OHANNESIAN: We would ask that Mr. Kelly remain for a few minutes.

THE COURT: You will remain for a few minutes, Mr. Kelly.

THE WITNESS: Here or outside?

THE COURT: Oh, you may sit in the courtroom.

MR. OHANNESIAN: We ask at this time we have an intermission until the usual hour and I will try to get another witness here.

THE COURT: Do you want to talk to Mr. Kelly about this other matter?

MR. OHANNESIAN: No.

(At this point the court, out of the hearing of the jury, directed the Marshal to detain Mr. Kelly in his custody.)

(Testimony of A. G. Barber.)

A. G. BARBER,

a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I am the chief of police of Elsinore, having been chief approximately four years. Am acquainted more or less in that vicinity; know where the Bruno Ranch is located and had an occasion to go there in the early part of January, 1930, to-wit, on January 21st in the afternoon about 2 o'clock, in the company of Federal Agent Clements. I met Mr. Clements on that date in the City of Elsinore, in front of the City Hall, about 1:30. I was asked to accompany Mr. Clements by himself to go to the Bruno Ranch, as Mr. Clements said to me he had one officer. I accompanied him to the Bruno Ranch. I know where the Elsinore-Perris Highway is, it being marked on the map as "A;" and arrived there about 2 or 2:30 o'clock. Officer Clements was with me, we having proceeded there from Elsinore. Prior to arriving at the Bruno Ranch we arrived at the house of Herman Quirin, indicated on the map as "B." Officer Clements and I went to the house and found Mr. Quirin in it shaving. Mr. Clements said that he wanted Mr. Quirin. Clements said to Quirin, "I want you." Quirin said, "Who are you"? Clements said, "We are officers." And Clements walked in and I followed him. Quirin said, "wait a minute. Wait a few minutes until I get through shaving." And Clements said, "All right." After Mr. Quirin got through shaving Clements said, "Come on and go with us." From the house of Quirin

(Testimony of A. G. Barber.)

we went directly to the Bruno Ranch house. Before we left the Quirin house we made an examination of it. I think there were two or three beds in the Quirin house, that is, the house about 30 feet from the Elsinore Highway. The table was set. The breakfast dishes wasn't cleared off the table yet. Then we proceeded on to the Bruno house marked "E" on the map. When I arrived there I saw the defendants Connley and Vernon (Verda). I knew the defendant Connley by another name, that is, the name Walker. I did not know at that time what his given name was. I asked him what his name was and he said, "My name is Walker." P. Walker is what he told me. I asked him where his car was. He says, "I don't drive a car." Then I says, "Come on. Come through. Let me see your driver's license." He says, "I haven't got it." Then I went on outside of the house west and saw a Ford coach, a 1929 coach, painted brown. I looked in this car and found the driver's license, and his operator's license in with his registration. I noticed it was registered under the name of Peter Connley. I saw the defendant drive that particlular car at Elsinore several times.

Relating to a shed marked "H" on the map, I noticed gasoline tanks there. I couldn't say from whom these tanks had been purchased or to whom they belonged. I do remember very well the tanks and also some 50-gallon barrels of molasses under the shed where the distillate tanks, or iron barrels, were lying at that time. I saw the sunken tank and made an investigation of it to see whether or not it had any leads away from the tank. It had a pipeline leading from the sunken tank

(Testimony of A. G. Barber.)

down toward the still. It went down to the boiler of the still. It was connected to the boiler. I know because I went down and investigated myself. As to the condition of the boiler, it was warm. I went into the house marked "E," known as the Bruno house, and made an examination of it. I saw that column lying there and two beds in a bedroom south from where this column was. I saw a table set there in the kitchen. I think I counted for seven persons, counting the knives and forks and plates and cups and saucers. I did not notice a bell or buzzer in that room but we discovered a push-button in the next room east of the kitchen at the Bruno house located behind the door jamb of the door leading from the kitchen into this off room east from the kitchen. It was in working order. I had traced the wiring from the still under the house to the batteries and from the batteries up to the push-button. The wiring extended down into the pit where the still was located, the wire being approximately 200 feet long. It was underground; and at the other end of the wire there was a bell placed on a 8x8 post holding the roof of the covering of the still. I identify Government's Exhibit No. 9; and in that picture I observe the bell on the post. That particular bell was connected with the push-button found in the Bruno house because I had occasion to place a man by the name of Powell down in the still and I went up and pushed the button myself to find out whether or not it was alive.

(Whereupon counsel for the defendants stipulated that the bell worked.)

(Testimony of A. G. Barber.)

THE WITNESS: I observed that there was in the pit seven large vats about 8 feet high and 11 or 12 feet across, made of redwood. The seven vats were full of mash and I would say there was about 8,000 gallons to the vat. I found some alcohol in the pit, there being two large galvanized tanks approximately anywhere from ten to thirteen hundred gallons. I noticed many 5-gallon tins there similar in appearance to those we have in the courtroom here. The alcohol that was found there was taken back by the orders of Mr. Peters, I believe. I had nothing to do with the drawing of the alcohol into tins and taking it away but I was there when it was taken away.

(Whereupon Mr. Herron for the defendants informed the court that, if the government would assure the defense there was alcohol in the cans, they would stipulate to that fact; and that, if the government would assure the defense that the cans contained alcohol in excess of one-half of one per cent, they would so stipulate. These assurances being given, these facts were, by stipulation, admitted to be true.)

(Counsel for the plaintiff, Mr. Ohannesian, then asked the defendants to stipulate that no government tax had been paid on it for manufacturing the liquor. Whereupon Mr. Graham, of counsel for the defendants, stipulated that the defendants had not paid any tax.)

(Counsel for the defendants further stipulated that there was a still in the pit, as stated by the witness and as shown by the photographs; that these defendants did not register it with the Collector of Internal Revenue and didn't have anything to do with registering it.)

(Testimony of A. G. Barber.)

(Whereupon two cans of mash were marked as Government's Exhibit No. 16.)

THE WITNESS: I examined the mash in the large tanks. It was in the process of fermentation. It was fermenting.

(The two cans of alcohol were received in evidence and marked as Government's Exhibit No. 17.)

THE WITNESS (Referring to Government's Exhibit No. 10): I recognize the picture. The man represented as standing there is myself. I examined the boiler shown in the picture, which was of about 30-horsepower capacity. I could not say whether there was anything to indicate from whom it was purchased or from what boiler works.

(Counsel for all of the defendants announced they did not desire to cross-examine this witness.)

(It was further stipulated between counsel for the respective parties that none of these defendants did, or intended to, obtain a permit from the Collector of Internal Revenue to transport, manufacture or possess any intoxicating liquor.

(It was further stipulated by and between counsel for both parties that no one registered the still found on the Bruno Ranch with the Collector of Internal Revenue.)

DIRECT EXAMINATION RESUMED
BY MR. OHANNESIAN.

THE WITNESS: Prior to the raiding of the still I had no conversation with the defendant Bruno pertaining to anything in regard to the still or any business going on there of any kind. After the raid I had such a conversation.

(Testimony of A. G. Barber.)

THE COURT: This is receivable only in Mr. Bruno's case. Proceed.

THE WITNESS: At the house known as the Bruno Ranch on the Bruno property Mr. Bruno said to me that Verda had worked for him I understood him to say in the capacity of cook and laboring around the premises. Nothing else was said by Mr. Bruno that I recall. Mr. Verda was present at these conversations which occurred on January 21st in the afternoon. And Verda said to me that he was working for Mr. Bruno; that Mr. Bruno was his boss. He said he was getting \$30 a month. But I wouldn't be positive as to that.

THE COURT: This testimony is received also in the case of Verda but not as to the other two defendants. I mean just that portion of it.

THE WITNESS: With reference to the pipeline from nearby the house of Quirin, located about 30 feet from the Elsinore-Perris Highway, I noticed a 2-inch pipeline coming out of a mine shaft in the direction toward the still. I saw where the other end of the pipeline extended to and it extended down by the still into what I would say was a water pit or reservoir. This water pit, although I didn't measure the distance, was close to the still proper or the haystack. I found no other source of water supply for the still other than this pipeline. There was no other source of water supply that I have seen. I searched exhaustively for it and found none. Directly opposite the letter "K" on the blackboard there appears to be a break in the pipeline, "M" representing the pipeline. After my first examination on January 21st I noticed a break in the pipe, that

(Testimony of A. G. Barber.)

is, it being pulled apart. On the date of January 21st there was no break and there was a continuous pipeline from the mine directly down to the still. I went down into the mine and there found a gasoline engine down in the shaft about 60 to 65 feet; but I did not measure it accurately. I did not have any conversation with anyone as to the ownership of the mine pumping plant or pipeline after this or any other time, nor did I take up the ownership of the pipeline with anyone. I examined the pipeline the second time, Officer Spencer and a Mr. Woods being with me. And I then made an effort to bring the pipes together to see if they connected. Spencer and I—I don't remember whether there was a third party there—pulled the pipe over. There was a broken joint there, which I knew was broken recently because I had seen it together prior to that time, that is to say, two or three days prior. I have seen the defendant Herman Quirin before; I couldn't say just how many times. I didn't make a special effort to count them but I have seen him several times in and around Elsinore. At times I have seen him with Mr. Connley and at other times I have seen him with Mr. Bruno. I have seen him approximately four or five times with Connley. And I wouldn't say it was three or four times with Bruno but I know that I have seen him more than once. I saw the three of them together, having seen them close together out there by the Quirin property while I was going along the highway at different times. At the time the ground was disturbed there there wasn't any sign of grain, that is, on January 21, 1930, there was no grain there. The haystack was there and it was

(Testimony of A. G. Barber.)

in the same condition as when it was knocked over on the 21st. About two weeks ago I had occasion to go out there and about three or four days ago; I think it was last Friday. I noticed that the grain was up quite high. The grain was planted up to between 10 and 15 feet from the still. There was a barbed wire fence around the haystack and the grain was planted very close to the stack of hay, inside the barbed wire fence as well.

CROSS EXAMINATION

BY MR. BELT.

THE WITNESS: When the defendants Connley and Quirin were taken to Elsinore, I don't remember whether Mr. Connley and Quirin or Mr. Bruno were in the car I was in. However, we eventually reached Elsinore, but the defendants were not booked in the Elsinore jail. They were just booked temporarily under the name of Peter Walker, I think. I don't remember whether he was booked under the name of George Walker. He wasn't booked with me. He was booked with the constable, and transported into Riverside. I was there at the time of the booking, but I did not see the booking. There was no booking, just held. The federal authorities—Mr. Peters was there present and ordered Constable Boyle to transport him to the Riverside County Jail. What happened there I have no first-hand knowledge of. I do not say that the defendants were not booked in any manner while they were in the City Jail in Elsinore, but say that they were not booked to my knowledge. They were in the custody of Constable Boyle. He is not present in court. I do not know how

(Testimony of A. G. Barber.)

long a period of time the defendants Connley and Quirin were in the City Jail at Elsinore. I am in charge of that jail.

Exception No. 18.

Q BY MR. BELT: Isn't it your practice when a prisoner is incarcerated in your jail to book him under a name?

MR. OHANNESIAN: Just a minute. We object on the ground that it is incompetent, irrelevant, immaterial.

THE COURT: He says he doesn't know he was there. Objection sustained.

MR. BELT: An exception.

THE WITNESS: He (Connley) was there, not to languish, but only as a convenient stopping place. The records of my jail do not show any record of this arrest. I was not present when the defendants were booked at Riverside. I was first on the ground up there at the Quirin residence on January 21, 1930, between 2 and 3 o'clock, just a short period after the raid. I examined the premises very carefully and had my attention directed to the alleged pipeline from the mine out by the Quirin property, down onto the Bruno property. I noticed that pipeline. I followed the pipeline up, starting from the mine, clear down to the inside of the Bruno property, down to what I would say was the pit by the still. The pipe on that occasion was continuously connected from the mine to the Bruno property. There was no dislocation at any place. All the connections were made so far as the line was visible above ground.

(Testimony of A. G. Barber.)

CROSS EXAMINATION

BY MR. GRAHAM.

THE WITNESS: This pipeline from the mine shaft by the Quirin property went to the inside of the Bruno property, down to the still. I remember a large square cement reservoir up near Bruno' house. That is what I mean by the pit. I didn't say the still pit. I said "the pit," and mean the reservoir there by the house.

(Whereupon the court was transferred temporarily to the premises referred to as the Bruno Ranch, in order that the court and jury might view the premises.)

(Whereupon the court, with all parties present as before, proceeded to a point about 5 miles from Elsinore, California, and stopped at the mouth of a mine near the home of the defendant Quirin.)

(Whereupon, being questioned by the court, the witness Spencer testified as follows:)

THE WITNESS: Noticing that we have a line of pipe disconnected right over the brow of the hill from the shaft, ending at the hole there, where there is a valve, it was not in that shape at the first time I saw it. The first time I came on the job here was two days after the still was raided and this pipe was coming straight down the hill about 15 feet from the end of this one. By "this one" I mean the one that is partially buried in the ground where it is now. The loose part was pulled back about 15 feet from the stationary pipe. It had been pulled right back. These weeds were all bent over. This brush here was all bent over. It was not beyond this bare spot here. It was right over the edge of this brush. The part that come out of the

(Testimony of A. G. Barber.)

shaft hole was lying just where it is now within an inch or two. I wanted to see that this joint fit the pipe that turned south. So I asked Chief of Police Barber of Elsinore to help me move this pipe back over to the long end of the pipe to see if the joints fit; and in moving it back this joint up here on the hill snapped. When I moved it back I moved it just about where it is now. At that time there was a fitting on the end of this long pipe in addition to the one there is now, and that is a Tee, a 2-inch Tee. One opening of the Tee extended up the hill and the other out toward the road. Somebody has taken that off. I will show you how the Tee was and we will let the folks decide here whether, if the Tee were screwed onto the end of the pipe which is partly buried, the Tee could or could not be fastened to the other end of the pipe which comes down out of the shaft where the valve is. This was a Tee with three openings. The side was screwed on here. The side opening in the Tee was screwed on just like I have this can now and this end was open. There was nothing in it and neither anything in that end; no fitting known as a union or anything like that; just the naked Tee. The whole pipe was approximately 12 or 15 feet back away from the end of the pipe which was buried. And when the whole pipe was about in the position where it is now the end where the valve is extended 12 or 15 feet beyond the end of the pipe, just partially buried just like it is now.

(Whereupon the following colloquy occurred:)

(Testimony of A. G. Barber.)

“MR. HERRON: In other words, the photographs, which we now call to the attention of the court and jury and which we ask be marked by the clerk, or the reporter, for identification, depict the situation substantially as it is now? Or we can introduce it when we get back. You gentlemen can look at it and you will know it does. That is the one right there and this is the other one.

“THE COURT: Either this stuff has been disturbed or else that is taken wrong end to. The pipe is on the wrong side of this radiator top.

“MR. HERRON: I think not. That is how it would lie geographically.

“THE COURT: No. This is where you have got it buried here.

“MR. HERRON: No. This is that pipe that goes into that bush.

“THE COURT: Oh, you mean this pipe? I thought you mean that pipe.

“MR. HERRON: No. You gentlemen will observe this is substantially the same situation. We, of course, don't know how many times it has been moved in the days that have gone by. That is substantially how it was at the time it was taken.

“MR. SPENCER: If that pipe laid back where it originally belonged it would show this to be up there.

“THE COURT: I am sorry but that photograph doesn't show this pipe. It shows a pipe with a bend in it.

“MR. HERRON: No. There is your bend. Apparently the pipe is turned over. That is your bend.

(Testimony of A. G. Barber.)

If some one stepped on it your bend would be down instead of sideways.

“MR. OHANNESIAN: Let’s pull this pipe over.

“MR. HERRON: I don’t think there is any materiality in it, anyhow.

“MR. OHANNESIAN: It would be a different angle as to that pipe.

“MR. SPENCER: Shall I straighten that joint out up there?

“THE COURT: Mr. Spencer, do you remember seeing this joint which is adjacent to the pipe in the ground at the time?

“MR. SPENCER:” That was screwed in exactly as it is now.

“THE COURT: Then was this horizontal pipe, the one that is loose at both ends, connected with the pipe through the Tee?

“MR. SPENCER: No. There was no connection more than there is here now. The Tee was on this fitting of the pipe. If that joint up there were straightened out it would throw this in a proper angle to show how that Tee would connect.

“THE COURT: At this joint here?

“MR. SPENCER: Yes, sir. I would like to straighten that out. You see this curve in the pipe here that is rolled here will throw that angle like that.

“MR. HERRON: In other words, your thought is a Tee would connect those two?

“MR. SPENCER: There is no question in my mind.

“THE COURT: Laying this loose joint over?

“MR. SPENCER: Yes, sir, that joint there. Chief Barber found this pipe first connected, and I got here

(Testimony of A. G. Barber.)

two days later. And during those two days this had been disconnected and this piece screwed in.

“THE COURT: Well, we will have to have him testify to that. That, of course, ought to go out of the record.

“MR. DOHERTY: Here is one thing I would like to point out to the jury. You will notice this length of pipe coming down the hill more or less follows the contour of the hill, and the straight angle that comes out points in a direction over here.

“THE COURT: We will have to have Mr. Barber’s testimony on that subject. It becomes increasingly important now. I think we had better go down there now to the other place, if the jury has this sufficiently in mind to understand the testimony. We had better move on.”

(At a pit a short distance from the mine the witness Spencer testified as follows:)

THE WITNESS: This is the same pipe; the same line. There are two more places here in the field, where the grain is planted, that I want you to see here; but there are none between here and the house except those two that stick out. I can show them to you.

“MR. HERRON: I think the jury should notice at this point that from the house on the hill which has been referred to in the testimony as the Bruno house the Quirin house down by the road is not visible, or vice versa.

“THE COURT: Yes; that is plain.

(At the gate entering the Bruno premises the following stipulation was entered into:)

(Testimony of A. G. Barber.)

“MR. HERRON: May the record show that there were no ‘Keep Out’ signs and no ‘U. S. Officers’ on the gate at the time of the arrest of the defendants, other than these that have been admittedly put up by the United States Officers?”

“THE COURT: That is, none put up by the defendants.

“MR. HERRON: None put up by the defendants; yes.

“MR. OHANNESIAN: Gentlemen, your attention is called to this road, which does not turn towards the still but turns towards the highway.

“MR. HERRON: Yes. In other words, if they wanted to go to the still they would have had to make a turn.”

(In a field on the Bruno premises.)

“MR. OHANNESIAN: Just a minute, Mr. Herron.

“MR. HERRON: Is there a pipe there?”

“MR. OHANNESIAN: Yes.

“MR. HERRON: We will concede it if there is.

“THE COURT: Gentlemen of the jury, there is an out-cropping of a pipe here.

“(At a well and pump below the Bruno house.)

“MR. HERRON: This is the pump, as I understand it, which the testimony shows Mr. Verda came down and shut off. You will notice a pipe runs out and, if you will follow it up the hill, it has been exposed in places.

“MR. CLEMENTS: Here is the 2-inch pipe here.

“THE COURT: That pipe is from this well. Here is the other pipe.

“MR. OHANNESIAN: That is from over at the pump. Where does this pipe go?”

(Testimony of A. G. Barber.)

“MR. HERRON: The watchman told me it was one that ran from the well.

“(At a reservoir near the Bruno house.)

“MR. HERRON: This, gentlemen, is the small pipe concerning which I was talking about a moment ago down at the well. It goes into the domestic water supply in the house, as you can see by the pipe on the outside of the house.

“MR. OHANNESIAN: It is not contended that small pipe furnished water for the still.

“MR. HERRON: Oh, no.

“MR. OHANNESIAN: This is the reservoir that has been referred to, gentlemen of the jury, a number of times, and that 2-inch pipe that we followed from the mine.

“MR. HERRON: In other words, it runs up and empties into this reservoir as you see it.

“MR. OHANNESIAN: Yes, sir.

“THE COURT: That is a discharge from the pipe from the mine, gentlemen. That is the end of the line we have been following up here.

“MR. SPENCER: The discharge from this tank here empties right on the inside of the well there with a 2-inch pipe, and it runs straight out here and down to the still. While this pipe is disconnected U. S. Agent Banta disconnected it because every time it rained the water ran down and filled the still pit up.

“THE COURT: Was it siphoning out?

“MR. SPENCER: There was no valve anywhere in the line.

(Testimony of A. G. Barber.)

“MR. HERRON: It is by gravity, I think, from that hole there, Judge.

“THE COURT: You will notice the hole there.

“MR. HERRON: As I recall it in the record I think it was some place around here where there was some lumber. Didn't some agent testify to some lumber?

“MR. SPENCER: Over there.

“(At some lumber a short distance from the reservoir.)

“THE COURT: The jury will notice this discharge pipe here. How about this pipe over here?

“MR. SPENCER: This pipe was directly connected to that. U. S. Agent George Banta disconnected this pipe here and put this long piece of pipe in the place of it for no particular reason, and took the fittings out of the mine where the power pump is to see if he could rig up some way to get a bath out here. He had been here about a week and felt awfully dirty. So he took the fittings with him out there. I saw him disconnect this primarily. And he had a union, too, and he took the union and the short nipple over there with him.

“THE COURT: There is a half union there.

“MR. SPENCER: There were quite a number of fittings scattered all around here.

“(Outside of the Bruno house.)

“MR. OHANNESIAN: This is the house that was marked as the Bruno house and where it is said there was found a bell. I assume the jury would like to go in the house and see that bell.

“MR. HERRON: Is this what was referred to in the testimony as the dining room?

(Testimony of A. G. Barber.)

“BY SOMEBODY: This is the dining room; yes, sir.

“MR. OHANNESIAN: What room is that?

“MR. HERRON: That is the room, as I understand it, where they found the copper column. Is that right?

“MR. GRAHAM: Is this the room in which you found the copper column?

“MR. SPENCER: Yes.

“MR. CLEMENTS: Right there is where the copper column was setting.

“THE COURT: Where was the bell?

“MR. CLEMENTS: We have the bell in a warehouse in Los Angeles.

“THE COURT: Where was the button?

“MR. CLEMENTS: The press button is out here.

“MR. DOHERTY: That is the place where the bell button is in there.

“MR. CLEMENTS: We have the wire, button and bell in the warehouse in Los Angeles. The batteries were underneath the floor in the basement and the wire went out under the corner of the house.

“(In the yard outside of the Bruno house.)

“THE COURT: Mr. Clements, when you got here to make the raid is it right that the bales of hay were entirely in place?

“MR. CLEMENTS: They were.

“THE COURT: So that nothing was visible but hay and the corrugated iron roof?

“MR. CLEMENTS: It was.

“THE COURT: And was the canvas where it is now?

(Testimony of A. G. Barber.)

“MR. CLEMENTS: It wasn’t bundled up that way but it was thrown over the sugar.

“MR. OHANNESIAN: When I came out the sacks were visible from this point and the canvas was over the sugar.

“MR. CLEMENTS: The canvas was over the sugar when we came out.

“THE COURT: The hay was around the frame work of the still house?

“MR. CLEMENTS: Yes, sir.

“THE COURT: How many bags of sugar did you say you found there?

“MR. CLEMENTS: 86, I think; but I wouldn’t be certain.

“MR. SPENCER: We put the galvanized iron around there to protect it from this recent storm.

“(At a shed in the yard of the Bruno house.)

“MR. OHANNESIAN: I want to call attention to this shed here. This is the shed that has been referred to from time to time during the taking of the testimony; and this is one of the barrels of molasses that has been referred to, and these are the drums.

“MR. CLEMENTS: Those distillate drums were all set out the same as these and there was some hay on the tops of them. The mules have eaten some of the hay.

“MR. HERRON: And, incidentally, the mules were here when you came, were they?

“MR. CLEMENTS: They were.

“MR. BELT: Mr. Clements, the jury would like to have you point out that buried drum.

(Testimony of A. G. Barber.)

“(At the point where a drum was buried in the ground.)

“MR. CLEMENTS: This is the steel drum.

“MR. HERRON: Was that old canvas covered over it when you saw it first?

“MR. CLEMENTS: No; it was not.

“THE COURT: Was it open like that when you saw it?

“MR. CLEMENTS: It was.

“MR. OHANNESIAN: Your attention is called to the distillate pipe here.

“MR. HERRON: Let the record show that the small pipeline running from the distillate tank down to the still has been raised somewhat from the soil.

“MR. CLEMENTS: I traced it different places.

“(At a point outside of the still.)

“MR. OHANNESIAN: This is the sugar. Were these openings closed at the time you came out?

“MR. CLEMENTS: No; they were not.

“MR. GRAHAM: Were they open just about as they are now?

“MR. CLEMENTS: Yes, just about as they are now. In fact I think they were all open. The first one I saw was that one over there and it was open.

“THE COURT: Are these the openings to one large tank?

“MR. CLEMENTS: Every tank has an opening on top.

“(Down in the pit.)

(Testimony of A. G. Barber.)

“THE COURT: I want the jury to see the number of the boiler and then the reporter may take it down. It is in small letters and rather difficult to see.

“A JUROR: It is ‘55,000.’

“MR. OHANNESIAN: And on the fire box appears the name of ‘Thompson Boiler Works.’ That is correct, isn’t it?

“MR. SPENCER: Yes.

“MR. OHANNESIAN: Then on the rear end of this boiler also appears the name ‘Thompson Boiler Works, L. A.’

“A JUROR: There is a number ‘735’ up above the ‘55,000.’

“A JUROR: And there is ‘Bukens, F. I. E.’ and there is room for a letter in between. Probably the ‘R’ is missing. And underneath it says ‘55,000.’ That may be 55,000 gallons capacity.

“THE COURT: I don’t believe it can be the number of the boiler.

“MR. SPENCER: That ‘55,000’ I think is the tensile strength of the sheet.

“MR. OHANNESIAN: I want to call attention to the fact that on this portion of the still, on the water column, it bears the name of the Thompson Boiler Works also.

“THE COURT: Mr. Clements, you see the mirror hanging there. Where was it when you first saw it?

“MR. CLEMENTS: It was about in that same place. It was in there some place. I don’t remember so much about that mirror but it was back there.

(Testimony of A. G. Barber.)

“THE COURT: Did you notice it to know whether the stairway could be seen or anybody ascending or descending the ladder could be seen in the mirror?”

“MR. CLEMENTS: I saw the mirror when I came down the ladder, but I didn’t look in it.

“MR. BELT: I think by looking in the mirror itself it will appear that you cannot see the stairway. The purpose of that mirror, I imagine, is to read the gages on the side.

“MR. GRAHAM: The purpose of the mirror is to read that thermometer that is hanging there.

“THE COURT: You see these two copper stacks here extending from the pit up. Is each one what you call a column?”

“MR. CLEMENTS: It is.

“THE COURT: Has the jury gone through the excavation here and seen the number of tanks?”

“MR. CLEMENTS: This is an alcohol tank.

“THE COURT: Let them go through first and see it.

“MR. OHANNESIAN: Your Honor, I want to call the attention of the jury to the character of the timber that is used in here, the size and height and different dimensions. We will be able to show, I think, by testimony where this lumber came from and by whom it was ordered. I ask that they notice these upright columns are 12 feet high and the size and number of them. I think you will find there are eight of this size. We can show where these came from and, likewise, the heavy timber that is in the boiler room.

“THE COURT: You have seen these alcohol cooling tanks, have you?”

(Testimony of A. G. Barber.)

“A JUROR: Yes.

“THE COURT: Mr. Clements, show the jury where the bell was and the wire that led to it.

“MR. CLEMENTS: We took it away. The wire went on back up here and followed out along the side up there to the outside. Where the sacks are here is where the wiring went out along the pipeline.

“MR. OHANNESIAN: The water supply is in this wooden tank up here, and Mr. Spencer has gone up there to investigate it.

“MR. SPENCER: This is the water tank here.

“(Outside of the still near some boilers.)

“THE COURT: Mr. Spencer, you were here how soon after the rain?

“MR. SPENCER: Two days.

“THE COURT: Tell the jury whether or not this old boiler was here when you got here.

“MR. SPENCER: It was lying where it is now; yes, sir.

“THE COURT: And the pieces over there, too?

“MR. SPENCER: Yes, sir.

“MR. OHANNESIAN: Is that the first boiler that was referred to as having been purchased—

“MR. SPENCER: This is the boiler that was bought from the Kelly Boiler Works on July 25th.

“MR. HERRON: Do you know that of your own knowledge?

“MR. SPENCER: That is what they told me. But we have the documents to show that.

“MR. HERRON: We ask that that go out, then.

“THE COURT: That will go out.

(Testimony of A. G. Barber.)

“MR. OHANNESIAN: I call your attention to four or five new pieces of tubing here, gentlemen of the jury, right by the baled hay.

“THE COURT: You will notice a quantity of unused tubing that is about 1½ inches or 2-inch tubing. Isn't it?

“MR. OHANNESIAN: We would like to call the jurors' attention to the number of bales of hay that surround this stack.

“MR. HERRON: What is the number?

“MR. OHANNESIAN: Approximately 130. I was told that.

“MR. GRAHAM: Were you told that by one of the officers that did count them?

“MR. OHANNESIAN: Yes.

“MR. HERRON: Did one of the officers count them?

“MR. SPENCER: I counted them.

“MR. HERRON: Well, we can stipulate to that when we get back.

“(On top of the still.)

“THE COURT: If the jury is interested in seeing one of these columns from the top similar to the ones which you saw from the bottom, you are invited to come up here and see one. Here it is.

“MR. OHANNESIAN: We want to call the attention of the jury to a water tank here apparently to supply the water, with a 2-inch pipe reduced to an inch and a half; and that there is an automatic shut off valve.

“THE COURT: Does counsel for the defendants want to see that?

(Testimony of A. G. Barber.)

“MR. HERRON: No. If the United States Attorney says it is there we know it is, knowing him.

“(At the side of the still.)

“MR. OHANNESIAN: I desire to call the attention of the jury to some yeast that is here, evidently in poor condition. I think it will be stipulated it is yeast. It can be told upon the wrappers that it is.

“MR. GRAHAM: I don't think there is any question about it.

“MR. CLEMENTS: The yeast was covered up.

“MR. OHANNESIAN: And there is a septic tank connected with this, too, that I think the jury ought to know about.

“THE COURT: Mr. Clements, for the purpose of the record tell the jury where that discharge of the residue of the mash was.

“MR. CLEMENTS: It is directly back of the still in that clump of trees.

“THE COURT: Distant about 150 yards?

“MR. CLEMENTS: You can see the pipe from here.

“THE COURT: Yes; I see some of it. Is there a creek or something down there?

“MR. CLEMENTS: That is an old wash. The cesspool is covered over and has been dug out.

“MR. HERRON: With brick sides?

“MR. CLEMENTS: Wood, I think.

“MR. HERRON: If you say there is a cesspool there, we will take your word for it.

“MR. CLEMENTS: You can smell the mash there.

“MR. OHANNESIAN: Gentlemen, it is the government's position that these two cylinders formed one boiler here.

(Testimony of A. G. Barber.)

“THE COURT: This is fitting on this end here, having been cut apart apparently by an acetylene torch, or something like that.

“MR. OHANNESIAN: There will be evidence concerning this tank and its removal and the time it was put out here and also these tubings.

“A JUROR: (On top of the still.) I want to sight across from here and see whether or not there is a gravity flow from the reservoir we looked at by the house into this still.

“ANOTHER JUROR: What did you find out?

“THE FIRST JUROR: It comes in considerably below the bottom of the house.

“(At the Bruno house.)

“MR. OHANNESIAN: The witness, Mr. Clements, stated when he came out here the first time the gate to the fence below us was open. Is that correct?

“MR. CLEMENTS: Yes.

“MR. GRAHAM: The gate to the large enclosure around the haystack?

“MR. OHANNESIAN: Yes.

“MR. HERRON: I would like to go to the back gate and follow the road around, unless you can stipulate to it. I can tell you what the fact is that I have in mind.

“THE COURT: I want to have the record show that the court is adjourned for the day.

“MR. HERRON: I think we ought not to adjourn it yet until this is shown.

“THE COURT: All right. In order to avoid the necessity of stopping later let's stipulate that the record may show that court adjourned at 4:30.

(Testimony of A. G. Barber.)

“MR. GRAHAM: There is one more thing I want to do. On the way out we want to go out the back way.

“THE COURT: Yes; but that will be after this time, so we can go on our way, and adjourn until 10 o'clock tomorrow.

“MR. GRAHAM: Yes.

“MR. HERRON: We just want you to observe that this road runs to the back gate, around the back line of the plowed area to the point where it meets with a road that runs along the fence on the east side. Then it follows around back of those hills, coming into the Elsinore-Perris road at a point just practically, by the speedometer, a mile from the Quirin house, measuring a mile from the Quirin house toward Elsinore.

“MR. GRAHAM: Another thing we wish to call your attention to is the road which comes down to the back gate runs to those houses which you observe up on the hill. The jury might also note the goat pens over there and the goats, which will probably be referred to later in the testimony. And the jury will note that the two gates here are practically opposite.

“MR. OHANNESIAN: We would like the jury to observe the number of acres that are under cultivation in grain or barley or wheat.

“THE COURT: What would you say it was?

“MR. OHANNESIAN: Approximately 19 or 20 acres.

“THE COURT: Oh, it is more than that.

“MR. HERRON: Let's let the jury observe it.

“MR. OHANNESIAN: All right. And that is all within an enclosure.

(Testimony of A. G. Barber.)

“MR. HERRON: Let’s make a stipulation to this effect: The United States Attorney and the attorneys for the defendants stipulate that the road which comes in the front gate of the ranch property runs by the house and out the back gate, and opens into a road which follows the back line of the Bruno property, where it joins a road which comes up the side line of the property and goes around past the front gate. Also, that from the point where the road leaves the back gate of the ranch and travels down and joins the road coming up the side of the ranch the road extends straight ahead and angles back over around the hills, coming into the highway running from Elsinore to Perris, which was the paved highway we came up, at a point about one mile closer to Elsinore than the Quirin house is located.

“MR. OHANNESIAN: That is a correct statement.

“MR. HERRON: In other words, there is a road leading into the back of the ranch from the highway as well as the front.

“MR. OHANNESIAN: I also call attention to the fact that the road on which we are now standing is at least four hundred feet nearer to the still than any portion of the road pointed out by counsel as leading into the main highway.

“MR. HERRON: It is four hundred feet nearer to the still than a portion of the road four hundred feet farther away. They both come to the same point. And the path down to the still would be at right angles to that road, is that it?

“THE COURT: Isn’t that a road straight across over there?

(Testimony of A. G. Barber.)

“MR. HERRON: Yes; there is.

“THE COURT: That is connected with the road on which we are standing at right angles?

“MR. HERRON: Yes; we stipulate to that.

“MR. OHANNESIAN: In addition to that, that gate is a distance of at least four hundred feet from the still, whereas we are within one hundred feet of the still.

“MR. GRAHAM: Yes. And let the record show it is twice as far from the front gate to the still as it is from the back gate to the still. Isn't that right?

“THE COURT: I should think that is so; yes.

“MR. OHANNESIAN: And we call attention to the condition of this road, too, that it is not a used road. The road referred to by counsel here is not a used road and the road leading into the still is apparently a used road from the appearance of the thing.

“MR. GRAHAM: We also want to call attention to the fact that there are two roads leading to the front gate of the Bruno Ranch.

“MR. HERRON: When you say it is not a used road you mean it is not used as much as the other road, is that it?

“MR. GRAHAM: It is apparent that there are two roads leading to the front gate of the Bruno Ranch, one which comes past the Quirin house and the other coming off of the Elsinore to Perris highway at a point one mile nearer Elsinore than Quirin's house.

“MR. OHANNESIAN: One road being nearer than the other.

“MR. GRAHAM: That depends where you are standing.

(Testimony of Russell F. Thompson.)

“THE COURT: Haven’t you enough of this geography now, gentlemen?”

(Whereupon an adjournment was taken until the following morning, when the case proceeded in the courtroom as before.)

(At this time Government’s Exhibit No. 18, a photostatic copy of a bill of lading, was marked for identification.)

RUSSELL F. THOMPSON,

a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I live at 2128 Rimpau Boulevard; am assistant manager of the Thompson Boiler Works located at 1000 North Broadway. We have been in business in Los Angeles since 1903. My line of work is mostly selling. The Thompson Boiler Works manufacturers steam boilers and hot water heaters and valves and necessary fittings. I am acquainted with Mr. Kelly, of the Kelly Boiler Works, only slightly. I believe that on the 8th day of January, 1930, I saw Mr. Kelly. He was in company with several men. At the time I had very little conversation with him. Directing my attention to Government’s Exhibit No. 18 for Identification, I recognize that. I have the original of it. It is not with me. It is in the office.

Exception No. 19

MR. OHANNESIAN: Is there any objection to our making use of the photostatic copy?

(Testimony of Russell F. Thompson.)

MR. GRAHAM: We object to it being introduced in evidence and we object to any testimony concerning it because it is entirely irrelevant as far as any of these defendants are concerned.

THE COURT: You don't object to the use of the photostatic copy?

MR. GRAHAM: Not on that ground; not because it is a photostatic copy.

THE COURT: You will accept that as freely as you would the original if you considered it competent, is that it?

MR. GRAHAM: Surely.

THE COURT: You may proceed. We will see whether it is competent.

Q BY MR. OHANNESIAN: Using that in order to refresh your recollection, what transaction, if any, did you have with Mr. Kelly and the gentlemen that were with him that day?

MR. GRAHAM: That is objected to on the ground it is hearsay as far as these defendants are concerned and it is entirely irrelevant.

MR. OHANNESIAN: This is in line with the testimony.

THE COURT: This is so far preliminary. I think this may be answered.

MR. GRAHAM: We object to it on the further ground that it is an attempt to impeach their own witness Kelly.

THE COURT: This is a different proposition. You cannot impeach in a formal way your own witness. You can introduce other witnesses whose testimony may be so

(Testimony of Russell F. Thompson.)

far different on the same subject from the testimony of this particular witness as to serve as a contradiction. There is a difference between impeachment and contradiction.

MR. HERRON: May we have an exception?

MR. GRAHAM: An exception.

THE COURT: Yes. Proceed.

Exception No. 20.

THE WITNESS: May I have the question?

(Question read.)

THE WITNESS: Mr. Kelly brought some gentlemen over that wanted a boiler of about 40-horse-power, as I understand, who went to buy it from him; and he did not have the article they needed in stock but he thought we would. So he brought them over to us to get what they wanted; and we sold them a boiler.

MR. GRAHAM: I move that answer be stricken out as incompetent, irrelevant and immaterial and hearsay.

THE COURT: The objection is overruled for the time being. You may renew it later if not connected.

THE WITNESS: I describe the character of the boiler that was sold as a 40-horse-power dry-back Scotch marine type. It carried my name on the front of the combustion chamber and a small plate there possibly and two plates on the back end with our name on, and on the front edge inside of the smokestack and initialed "T.B.W." It also carries a serial stamp of the boiler inspection, the Board of Mechanical Engineers, inspection office. The boiler that I sold had a water column. The name of the Thompson Boiler Works appeared on the column, too, as we manufacture those. In the month of

(Testimony of Russell F. Thompson.)

January, 1930, I sold only one 40-horse-power boiler of the type described.

Exception No. 21.

Q BY MR. OHANNESIAN: Was there any conversation between you and the men and Mr. Kelly as to where this boiler would be used or taken?

MR. GRAHAM: That is objected to as calling for hearsay.

MR. OHANNESIAN: That can be answered yes or no.

THE COURT: Yes.

THE WITNESS: All I can state is what I was told.

Q BY MR. OHANNESIAN: By someone there?

A Yes.

Q What were you told?

MR. GRAHAM: That is objected to as hearsay.

THE COURT: Now, read the question before that.

(The question was read as follows: "Was there any conversation between you and the men and Mr. Kelly as to where this boiler would be used or taken"?)

THE COURT: You may answer that by yes or no.

MR. OHANNESIAN: I will change that and ask by one of the men who came with Mr. Kelly.

THE COURT: Yes. Answer that—by one of the men that came with Mr. Kelly.

MR. GRAHAM: The same objection, if your Honor please.

THE COURT: Yes. Was any statement made as to where the boiler was to be used by any of the men who came with Mr. Kelly?

A Yes.

Q BY MR. OHANNESIAN: What did he say?

(Testimony of Russell F. Thompson.)

MR. GRAHAM: Objected to as calling for hearsay.

THE COURT: Overruled at this time. You may renew it, if necessary, if the situation changes.

MR. GRAHAM: An exception.

THE WITNESS: I was told it was going north of Bakersfield.

Exception No. 22.

Q BY MR. OHANNESIAN: Was anything said by that individual as to why this boiler was being purchased?

MR. GRAHAM: The same objection.

THE COURT: He may answer.

MR. GRAHAM: An exception.

THE WITNESS: I don't know how to answer that question exactly. I understood that it was for oil.

Q BY MR. OHANNESIAN: Well, what was said? State what was said.

MR. GRAHAM: If your Honor please, I understand this is all going in subject to the same objection.

THE COURT: Yes; you are saving your record right along.

MR. GRAHAM: Yes.

A I understood there was an oil proposition up north of Bakersfield where their old boiler went out, and they had to have another one immediately.

THE COURT: Was that what was told you?

A Yes; by one of the men that came with Mr. Kelly. Subsequent thereto the boiler was taken away by these men.

(The attention of the witness was thereupon directed to Government's Exhibit No. 10, which the witness examined.)

(Testimony of Russell F. Thompson.)

THE WITNESS: After examining the picture I would say that it is a picture of the boiler that I sold to Mr. Kelly and the gentlemen that were there on January 8th. I find upon the front end of the boiler, the combustion chamber, the words "Thompson Boiler Works." This boiler was paid for in cash; I do not know by whom except it was paid for by one of the men that was with Mr. Kelly. It was taken away the same evening by the men that came with Mr. Kelly. I did not see them take it away. I left probably just a half hour before it was taken out. I saw the men who were there at that time with Mr. Kelly. There were three or four or five men. For this boiler I made only the statement or bill here, making it out in the name of the Kelly Boiler Works. The Kelly Boiler Works did not participate by way of commission or otherwise in the transaction. Mr. Kelly brought these men over and then they stayed there a few minutes and then Mr. Kelly left. The men stayed there until they had the boiler loaded, that is, they paid me the money; and they had a truck there and we were loading it on the truck for them and the men went away and came back later and then I left. I was there until the boiler was practically on the truck. Our men loaded the boiler on the truck with the crane in the yard. The men who came with Mr. Kelly were still there. They waited for the boiler.

Exception No. 23.

MR. OHANNESIAN: At this time, your Honor, I wish to offer in evidence the exhibit marked for identification as the Government's Exhibit of the appropriate number.

(Testimony of Russell F. Thompson.)

(Whereupon Government's Exhibit No. 18 was admitted in evidence.)

MR. GRAHAM: We object to it on the ground it is hearsay as far as any of these defendants are concerned and entirely irrelevant, no connection being shown between any of these defendants and this transaction.

THE COURT: It is not altogether hearsay now because this witness has identified the boiler in question with the boiler at the place under investigation. The articles are identical, according to the testimony, and in addition to that the witness Kelly testified to the same transaction and named as one of the parties dealing for this boiler a man by the name of P. Walker. And there is some testimony, the conclusiveness of which is solely for the jury to pass on, as to the weight of it, which has a tendency in the direction of identifying one of the defendants on trial as one of the parties. So the hearsay rule is not quite applicable any longer. The witness also testifies that this was the only transaction during that month. The witness Kelly yesterday testified to enough to tend to show that the relationship between what he participated in, respecting the purchase of the boiler by P. Walker, and this particular transaction was close, if not identical.

MR. GRAHAM: But as far as this bill is concerned, your Honor, the bill simply purports to set forth a transaction between Thompson Boiler Works and Mr. Kelly.

THE COURT: But that is explained by what this witness says.

Q Why did you make the bill out to the Kelly people?

A Well, I didn't make the bill out myself. The book-keeper made the bill out, but I remember hearing him say,

(Testimony of Russell F. Thompson.)

“Who is buying this boiler? Who shall we make out the bill to?” And they told him, Kelly Boiler Works.

Q Who told him Kelly Boiler Works?

A The men that gave us the money.

THE COURT: You may have it. Objection overruled.

MR. GRAHAM: Exception.

THE COURT: I am admitting it against the one defendant, or whoever may be subsequently connected with the transaction, if it so turns out.

THE WITNESS: The purchase price of the boiler was \$1,450, paid in cash. An attempt was made to purchase on credit.

Exception No. 24.

Q BY MR. OHANNESIAN: Do you know why it was not sold to them on credit?

MR. GRAHAM: That is objected to as immaterial.

Q BY MR. OHANNESIAN: You can answer yes or no.

THE COURT: Was there something said on that subject?

A Yes, sir.

Q By whom?

A By me.

Q To whom?

A To these gentlemen.

THE COURT: Go on.

Q BY MR. OHANNESIAN: What was said?

MR. GRAHAM: That is objected to as hearsay and also it is immaterial.

THE COURT: So far as P. Walker is concerned it is not hearsay. Go on. It may be material.

(Testimony of Russell F. Thompson.)

MR. GRAHAM: Exception.

THE WITNESS: I asked for ratings. I was not given ratings. It was after banking hours and they could not give me ratings. And I told them the only way the boiler could go out was by paying it by certified check or cash. The money was paid then and there. The gentleman who did most of the talking paid for it.

CROSS EXAMINATION

BY MR. BELT.

THE WITNESS: I testified that during the month of January, 1930, I sold but one 40-horse-power boiler. I don't remember that we sold any 40-horse-power boilers prior to that. Our business is mostly small boilers and we do sell large boilers once in a while. We have sold probably seven or eight 40-horse-power boilers in the last six months. In the last year we have sold probably ten.

REDIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I mean 40-horse-power boilers but we sold none in the month of January other than one. I do not think we sold any in December. I would not know how many we sold in November without looking at the record, but I don't remember selling a 40-horse-power boiler in December. I don't recall selling any in February of 1930.

RECROSS EXAMINATION

BY MR. HERRON.

THE WITNESS: When I say I don't remember selling any I don't mean by that that I didn't sell any. The Thompson Boiler Works employs no boiler salesman except myself. All of the boilers which I sold, notably the 40-horse-power boilers, carried the name of the Company

(Testimony of Fred C. Amsbaw.)

FRED C. AMSBAW,

a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I live at Wildemar about six miles from Elsinore. I know where the Nick Bruno Ranch is located. I knew Nick Bruno in the latter part of July, 1929, when he rented my team. He came to see me, and brought another party with him, and wanted to get my team. He said he would stand good for the team. This other man that came with him was a Mr. McPherrin, I believe. He, Mr. McPherrin, rode one horse and led the other and taken them up to his place. Mr. Bruno went back to his ranch. They were taking the stock up to his, Mr. Bruno's Ranch. He, Mr. Bruno, told me he was going to do some excavating. I thereafter had occasion to go out on the Bruno Ranch. I remember the first time I was out on that Ranch. That was about the middle of July or something such. I have been there three or four times. I bought a couple of goats from him. The first time I went out there to the Bruno Ranch I saw Mr. Bruno and his wife. One time when I saw him he was milking goats. The first time I went there after he rented my horses it was at the house when I approached the house coming in; but I didn't see him doing anything. I went there a second time and Bruno was around the house. The second time I saw him he was in the house which was part lumber and part adobe, that is, the house on the hill by the trees. I saw him there a third time. He was not doing anything. I once saw him hauling some hay there.

(Testimony of Fred C. Amsbaw.)

I saw him using that team. The first time I was there and saw him using the team he was hauling hay on the ranch. I guess he got his hay various places where he could get it and feed his goats. The first time when he came out to the ranch I don't believe he stated what he had been doing. He was going to use a team, was all he stated. He said he was going to excavate, to level some dirt, I think, move it. He said he was going to use the team to move some dirt and level some dirt at his place. That is all I got out of it. On the first occasion he did not say anything about a pit. I can't say that at any time I saw the team at work. I was by there and saw the team in the corral in the daytime but he had two teams there and seemed to be working them at different times. I did not see the team working leveling any time day or night. I was on the place when the team was hauling but I was not when they were working with the dirt.

Exception No. 25.

Q BY MR. OHANNESIAN: Were you ever on the place when you saw Mr. Bruno leveling the dirt?

MR. HERRON: We object to that as having been asked and answered.

THE COURT: No; he has not been asked that particular question.

MR. HERRON: Exception.

A No; I wasn't. I was at the place there one time when the dirt had been changed around at different times when I was there, it was different, because it had been plowed up there; but I didn't see any team working at hauling any dirt or any such. I did not see any team leveling or hauling dirt about. I did not see anyone level-

(Testimony of Fred C. Amsbaw.)

ing dirt there with a team or without a team day or night. I had more than one conversation with Bruno. The second time I had a conversation with Bruno was with regard to a goat, about me getting a goat. I had no other conversation; just those two occasions. That is all I talked to Mr. Bruno. The horses were brought back to my place from Wednesday to Wednesday. That was a week, seven days, they were kept. A boy brought the team back. I would judge he was about 18 or 19 years old.

I have seen the defendant Herman Quirin. He is in the courtroom. I first saw him when he came and got the team. That was about the first part of June. I had a conversation with him. I talked with him. He stated that he was going to use the team for excavating purposes. I believe he stated they were going to have two teams and run different shifts. That is all he said. I talked with him and I told him the team had been on pasture and they weren't in good condition to do a great lot of real lugging work, that is, in the way of moving dirt. He said they would work them in the afternoon when it was cooler. He said they were going to move some dirt with the team on the place. My wife and I were there when that was said. Mr. Quirin was present talking to me. There was a boy with him. When I saw the team it was on Bruno's place. After the team was taken back Herman Quirin came there and took the team away himself. He took the team to Bruno's Ranch. I saw the team there once when they took them away. I didn't investigate around at all or ask any questions. Herman Quirin paid for the team. Bruno had one team at one time and then came back and recommended the other man to take the other team. So I fur-

(Testimony of Fred C. Amsbaw.)

nished two teams. This team that Herman took away I think they got for excavating dirt. I did not see that team at work at any time. I know the use they were put to because they told me so. During the time I was on the Bruno Ranch all I saw were some trees being dug out and plowing and where they dug some trees out in this locality. I judged at the time, from what he had been talking to me along on other subjects, about putting in some alfalfa there. That is the only thing I know. I saw a hole down there in the low ground just below the Bruno house, but it looked to me as though there had been a lot of trees dug out there. I did not go up to the hole. It did not interest me at all. I saw work being done in the low ground while I was there. I noticed there was some work done there but I didn't know but what it was being leveled for some alfalfa. I did not go down to see what it was. The trees which I have said were torn out were moved and the stumps were back out of the way more. I saw the stumps. They were fair sized trees. They would cover a space to dig a hole, I imagine, about ten feet in circumference, around. I saw the trunks of the trees. They were willow trees. I noticed the trunks were drug back more on a hill. With reference to the Bruno house, the house is on a knoll and the trees were drug out over on another knoll. The hole out of which the trees came is about where the pit is now. I have been over there and know where the pit is now. With relation to where it now is the trees were growing on identically the same spot. I saw the space on which there now appears to be a stack of hay before the hay was there. There was a little house setting right there where that hay is now when I first saw the place. I

(Testimony of Fred C. Amsbaw.)

saw that the house had disappeared from where it was then. At the time I was there he was building the little tin house where the gas tanks is now. I cannot say that I noticed any buildings going up or work going on where those trees were uprooted that I have just described. I never saw that work going in. After the trees were taken out there was some excavating work done there undoubtedly, which I noticed. I noticed there had been more dirt dug up and moved. I noticed there was a kid there working doing the leveling and an old gentleman there, too.

Directing my attention to Mr. Verda, the old gentleman in the courtroom, I never saw that man there. I never saw any of the defendants that are here out there leveling the ground. None of the defendants told me they had done any of the leveling out there.

Exception No. 26.

MR. OHANNESIAN: Your Honor, I have a matter that I want to call your Honor's attention to, but I would rather call your Honor's attention to it in the absence of the jury.

THE COURT: Yes. Will you please step outside?

(The jury retired from the courtroom.)

MR. OHANNESIAN: Your Honor, I have given to counsel a copy of a statement that we claim was signed by the witness. I would like your Honor to view this statement. This witness was asked, your Honor—

THE COURT: Yes. I will take care of it in a minute.

MR. OHANNESIAN: Very well.

Exception No. 27.

MR. HERRON: We think the witness should be excused during the time—

(Testimony of Fred C. Amsbaw.)

THE COURT (Interrupting): No. The witness will stay here. Now, Mr. Amsbaw, the court appreciates that you may be under some reluctance to testify frankly. I have been in this business so often, especially with reference to violations of this particular law, that I can sympathize with a witness who is a neighbor and desires to be careful. At the same time your government is entitled to have a full disclosure from you of all the knowledge you have, and it appears that on the 7th day of February, 1930, in the presence of Mr. Spencer, the investigator, you made a statement in writing regarding this matter. Do you remember that?

A Yes, sir.

Q BY THE COURT: And you signed it?

A Yes.

THE COURT: Now, I will show you what purports to be that, and ask you if that is the statement that you made?

MR. HERRON: If your Honor please, I feel that for the purpose of the record we must object to this proceeding and this examination.

THE COURT: Very well. You may enter your objection and an exception. Proceed.

MR. GRAHAM: An exception.

A Yes, sir.

THE COURT: Is that statement true?

A Yes, sir.

THE COURT: And it is true, then, that at the time that Bruno came to you in the latter part of July, 1929, he said he had been digging a pit on his ranch and wanted to level down the dirt? He said that, did he?

(Testimony of Fred C. Amsbaw.)

A Yes.

THE COURT: You asked him to go along, that you might drive your team, and he refused and said he had a man to drive it?

A Yes.

THE COURT: And that Quirin came with him?

A Yes.

Q BY THE COURT: And drove the team, yes? That is right, is it?

A Yes, sir.

THE COURT: And this statement that you made refreshes your memory as to what happened in that transaction, does it?

A Yes.

THE COURT: Do you want anything more with this witness before the jury comes back?

MR. OHANNESIAN: No, your Honor, I think not.

MR. HERRON: I would like to ask him a question. Are you certain that those were the exact words, that he had been digging a pit on his ranch?

THE COURT: No, he doesn't have to be certain about the exact words.

MR. GRAHAM: Your Honor, it is very important whether Bruno told him he was digging a pit, or simply was leveling some dirt.

THE COURT: Did he tell you he had been digging a pit?

A He stated he was going to level some dirt where there was a hole.

THE COURT: You say in this statement that he told you he was digging a pit. Is that true or not?

(Testimony of Fred C. Amsbaw.)

A Wouldn't you call a large-sized hole somewhat of a pit?

THE COURT: Yes. But did he say that he was digging a pit?

A He didn't say he was digging—he said a hole.

THE COURT: Now, you say here that he said he had been digging a pit on his ranch and wanted to level down dirt. Did he say that or not?

A The pit proposition is what gets me.

THE COURT: Well, you can remember whether or not he said that he was digging a pit, can't you?

A The hole proposition would be similar to a pit, the way I look at it.

THE COURT: Did he say he had been digging a hole?

A Yes.

THE COURT: He said he had been digging a hole?

A Yes.

THE COURT: Do you think he used the word "hole" rather than "pit?"

A Yes.

THE COURT: And that he had been digging it?

A Yes.

THE COURT: Anything more?

MR. HERRON: Did he say he had been or was going to?

A He had been, and wanted to level the dirt down.

Q BY MR. HERRON: And wanted to level the dirt down?

A Yes, sir.

Q Did you write this report or dictate it, or did Mr. Spencer, the agent, write it up from what you said, and then ask you to sign it?

(Testimony of Fred C. Amsbaw.)

A He wrote it up and asked me to sign it.

Q And the language in that report is his language, isn't it?

MR. OHANNESIAN: We object to that.

THE COURT: He may answer that.

Q BY MR. HERRON: The language in the report is his language, isn't it?

A Yes, it is his language, and yet it might not be just as I worded it, and yet it would make it come out in the right language.

Q It is the same effect, but the exact language is the language of Spencer, isn't it?

A Yes.

THE COURT: But the only criticism you make of it is that he used the word "pit" where you said "hole?"

A Yes.

Q BY MR. OHANNESIAN: It was after Mr. Spencer had spoken to you and asked you what the facts were that he wrote this up, is that right?

A Yes, that there has been typewritten over.

THE COURT: Did you read it over before you signed it?

A Well, I read the paper that was written over.

THE COURT: This paper that you signed here?

A Yes.

THE COURT: And the only modification you would make of that statement would be to substitute the word "hole" for "pit?"

A Yes.

THE COURT: You used the word "hole?"

A Yes.

THE COURT: Bring the jury in.

(Testimony of Fred C. Amsbaw.)

Exception No. 28.

MR. HERRON: If your Honor please, before the jury returns, we wish to enter our objection to this entire proceeding on the ground, first, that there has been no reluctance shown on the part of the witness to testify to the truth; second, that it is examining him upon a statement admittedly employing the words of a government agent, rather than his own words, and I know, without any intention on the part of the court, nevertheless we feel that we must object upon the ground that the questioning by the court out of the presence of the jury upon this statement can have no other effect than to intimidate the witness and to cause him to feel that he must now in effect make his statement conform to the language used in this statement, which was prepared by Spencer, and read over and signed by him.

THE COURT: Well, Mr. Amsbaw, all this Court wants of you is to tell all of the truth about this, not to keep anything back.

THE WITNESS: Well, I will tell you—

THE COURT: Just a minute now. Wait until I get through. We want you to tell the truth. The Court is not trying to intimidate you, and you don't understand that, certainly. He has said here several times in this court that this man actually did say he had been digging a hole. If that is true, we want you to tell this jury. If it isn't true, we don't want it at all. The Court is taking no sides in this case at all, but we are insistent that we shall get all of the truth.

MR. HERRON: We object and ascribe that statement as error, upon the ground that it can have no effect

(Testimony of Fred C. Amsbaw.)

unwitting though the court may be about it, than to intensify in the mind of the witness the thought that the Court might feel that he is not telling the truth, and put him under compulsion to tell another or different story than he was testifying to under oath.

THE COURT: Well, is it the truth that you used the word "hole"?

THE WITNESS: Yes.

THE COURT: Bring in the jury.

(The jury returned into the courtroom.)

MR. OHANNESIAN: Now, Mr. Amsbaw—

THE COURT: The court will ask this question.

MR. OHANNESIAN: Pardon me, your Honor.

Exception No. 29.

THE COURT: Now, Mr. Amsbaw, in the absence of the jury has your memory been refreshed as to what Mr. Bruno said to you at the time he first came to get the horses in company with Mr. Quirin?

MR. HERRON: If the court please, we object to this question and each and every question which shall hereafter be asked of this witness along the general line, for the reasons which I stated to your Honor in the absence of the jury, and each of those reasons.

THE COURT: Now, that objection of yours in the presence of this jury makes it necessary for this court, in order to protect the court, to go something into the reasons why this thing is done. We had hoped to make it unnecessary in the interest of the defense to do that. I will proceed to do it now. You have opened the door.

MR. GRAHAM: May I state we object to the court making the statement as to the reasons?

(Testimony of Fred C. Amsbaw.)

THE COURT: You are not going to make any statement to the jury. We are going to interrogate this man and get the reason.

MR. GRAHAM: Exception.

Exception No. 30.

Q BY THE COURT: Now, Mr. Amsbaw, in February of this year you made a statement about these matters to one of the government agents, Mr. Spencer, didn't you?

A Yes.

Q And that was reduced to writing?

MR. HERRON: In addition to the objection I made, I desire to object on the ground it is an attempt to impeach the testimony of the government's own witness.

THE COURT: No, it isn't. It is an attempt to get all of the testimony of the government's witness.

MR. HERRON: An exception, if your Honor please.

THE COURT: It is not an attempt to impeach him at all.

Q That was Mr. Spencer, wasn't it?

A Yes.

Q And after you told him all you knew he reduced it to writing, didn't he?

A Yes.

Q And you signed it after reading it over; that is true, isn't it?

A Yes.

Q And, having seen that document, your memory is refreshed as to what happened?

A Yes.

(Testimony of Fred C. Amsbaw.)

Q That is what you told the court in the absence of the jury, isn't it?

A Yes.

Q Now, tell this jury substantially what Mr. Quirin said to you was the reason he wanted these horses—or that Mr. Bruno said to you when he and Mr. Quirin came in July last to get your team and rent it of you?

A My understanding was—

Q What did he say in substance, now? What did he say that he wanted the horses for?

A He wanted the horses to level the dirt down from a hole. That is what he spoke to me about.

Q What did he say, if anything, about having theretofore dug a hole?

A He had dug a hole and he wanted to level the dirt down.

At that time I offered to work for him, drive my own team, and he rejected it. He said he had a man.

Exception No. 31.

MR. OHANNESIAN: Your Honor, at this time, if the court deems it necessary, I now submit the written statement that your Honor has referred to, and, in view of the fact that it was used in order to refresh his recollection as to what was said by the defendant Bruno to him, it is offered in evidence in support of the testimony given by the witness.

MR. GRAHAM: We object to it on the ground that it is an attempt to impeach the witness.

MR. OHANNESIAN: It is not for that, and I so stated.

THE COURT: If this is your only objection, it is overruled.

(Testimony of Fred C. Amsbaw.)

MR. HERRON: And we object on the further ground it is hearsay, incompetent, irrelevant and immaterial, being an ex parte statement not made from the witness stand, and admittedly, as stated by this witness, not containing his words but the words of the agent.

MR. OHANNESIAN: There is no such evidence as that at all.

THE COURT: That should not have been said in the presence of this jury.

MR. OHANNESIAN: Counsel knows that and he ought to be cited for contempt for making such a statement, your Honor.

MR. HERRON: It is part of my objection.

THE COURT: But you should not have said that in the presence of this jury.

MR. OHANNESIAN: That is a matter I avoided by asking the jury to leave.

MR. HERRON: Then I will ask the court to instruct the jury to disregard it, or I will ask the witness the question in the presence of the jury.

MR. OHANNESIAN: The statement is not a subject of cross examination. It was not used for that purpose and counsel knows it. From his long experience he knows that his conduct is not correct.

MR. HERRON: I believe my conduct is correct.

THE COURT: We will have no controversy on that subject at all, but we will not submit this statement to the jury because the jury has from this witness the substance of it.

MR. HERRON: Then we will ask that the comments of the court as to what the statement contained, contained

(Testimony of Fred C. Amsbaw.)

in the court's questions to the witness on the statement, be stricken.

THE COURT: I beg your pardon. What do you want stricken?

MR. HERRON: The remarks of the court purporting to read from the statement.

MR. GRAHAM: The statement of your Honor which is, in effect, a statement of what the witness' statement contains, when your Honor said that since the jury had returned he had testified substantially—

THE COURT: You don't mean to question the court's truthfulness about it?

MR. GRAHAM: Not at all, your Honor.

MR. HERRON: Merely the correctness in point of law of the court's action; certainly not the court's truthfulness.

THE COURT: This is made a part of the record. Exceptions by each defendant.

MR. HERRON: Thank you, your Honor.

Exception No. 32

THE COURT: The jury will determine whether the court misread that.

MR. HERRON: We don't want to be misunderstood as questioning the court's truthfulness.

THE COURT: That is what it amounted to.

MR. HERRON: We object to it on legal grounds.

THE COURT: Never mind; it is in. We will not talk about it any more.

MR. HERRON: If the court please, I feel counsel is entitled to have this court and jury understand that at no time did we reflect upon the truthfulness or the fair-

(Testimony of Fred C. Amsbaw.)

ness of interpretation of this or any other District Judge. I have practiced too long in these courts not to know the high character of Federal judges and their honesty and sincerity, to have any such imputation put upon anything I might ever do. I do feel, however, in justice to the defendants I represent, that if the court has committed error, I should preserve that fact in the record in the event the case should be taken up on appeal.

MR. GRAHAM: We mean legal error and not an error in the statement of the court.

THE COURT: There is no question about. You are all right on that. We are not questioning that, but this statement is now in.

Exception No. 33.

Q. What difference is there between the statement as given to Mr. Spencer and reduced to writing by him, to which your attention was drawn, and what you have said to the jury as to the purpose for which Mr. Bruno said he wanted the team?

MR. HERRON: We object to that on the ground it is not the best evidence. The statement is in and the testimony of the witness is in the record, and that is the best evidence.

THE COURT: All right. You admit the statement?

MR. HERRON: No, we don't admit it. It is in the record over our objection.

THE COURT: Then you are waiving your objection.

MR. HERRON: I do not desire to be so understood. I protest against any such interpretation of my statement. I merely called the court's attention to the fact that the statement being evidence and this witness having testified,

(Testimony of Fred C. Amsbaw.)

that a comparison of this statement which your Honor admitted in evidence and gave us an exception to its admission, and the record of the testimony of the witness, is not the best evidence. My objection goes to that.

THE COURT: You are extremely difficult to please. I hope I please you now. The court said to this jury, to which you took exception, that there was no substantial difference between the statement and the witness' testimony, and for that reason we would not permit the statement to go in. Then when we undertook to discover whether there was any substantial difference between the statement and the testimony of the witness, you objected because you say the statement is in. You can't have that thing both ways, so we will leave it just as it is. Go on to something else.

MR. HERRON: An exception.

(Counsel for all of the defendants announced they did not desire to cross-examine this witness.)

(Whereupon the court made the following statement):

THE COURT: Now, gentlemen, about this statement, before we go any further. If you discover anything of substance in the statement to which the witness has not testified, why, to that extent, of course, you ought not to have this statement put in against you. You may examine it and see.

MR. OHANNESIAN: I may state, for the purposes of the record, that I gave to the counsel an original duplicate copy of the statement before the witness was examined, and they had it before them when the examination took place.

(Testimony of Ed. Funk.)

MR. HERRON: That is, you mean before the witness was interviewed, following the first portion of your examination.

MR. OHANNESIAN: Following the first portion, and you have had it with you ever since.

MR. HERRON: Yes.

THE COURT: If there is anything in that statement to which the witness has not testified substantially to this jury, the court will strike that part out, if you ask the Court to. You have the opportunity. Swear this witness.

ED. FUNK,

a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I live at Warm Spring Valley about a mile and a half northeast of Elsinore. I know where the Bruno Ranch is located. It is approximately four or four and a half miles northeast from my place. I am acquainted with Nick Bruno and knew him in the month of July, 1929, when I had a business transaction with him. I have sold him hay at different times and sold him some hay in the month of July; I don't remember just how much but at one time 60 bales; at other times a few bales at a time and the last time there was a stack of 130 bales. The last stack of 130 bales was delivered in July or August. Mr. Bruno called for these 130 bales of hay and hauled all of it. I hauled one load to his ranch with him. I saw the still for the first time when I went with a federal man shortly after they found the still and saw the still there and the hay piled on top of it. My attention being called to

(Testimony of Ed. Funk.)

Government's Exhibit No. 6, I see in that picture a stack of baled hay. I examined two or three of the bales and am able to say that those are the bales that I sold to Mr. Bruno. I examined the tie of the wire and it was my own tie; and I am able to identify the bales by the tie which I put about the bale. It was poor hay, full of sunflowers the same as what he got. I did not count the number of bales that were about the still and wouldn't say approximately that it was all of the hay that was purchased by Mr. Bruno the last trip. Mr. Nick Bruno paid for the hay. I was out to the Bruno Ranch when a team of mules had been working scraping a hole out there. I saw just one hole. Later I saw it when I went with the federal man and it was in the same place as it was when I first saw the hole. The day I was there the team wasn't doing nothing. They had struck a period like the man wasn't paying them. Nick was with me. He told me that he had leased that place to put it in alfalfa. They were putting a sink hole to put in a pumping plant. This was the same place where I later observed the still located. I have seen the defendant Herman Quirin, whom I recognize as the man in the courtroom with the paper in his hand and with the bald head. At the time I observed him Nick was talking to him.

CROSS EXAMINATION

BY MR. HERRON.

THE WITNESS: Nick Bruno had from time to time bought hay from me. He had not bought hay every year for several years but had bought it the last year. On this particular occasion I sold him some hay and rode out with him to the Bruno Ranch on one load. And, while I was

(Testimony of H. S. Wagoner.)

there, I observed that there had been some scraping done down at the place where I later found the still to be. I noticed some trees had been removed from that place and that was the only occasion on which I visited the ranch from that time until after the raid occurred.

REDIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I assisted Mr. Bruno in hauling the hay. I unloaded right at the house on top of the hill, between the house and the little shed there on top of the hill. I know where the goat corral is and that was quite a little ways from the goat corral; I would say four or five hundred feet or less.

RE-CROSS EXAMINATION

BY MR. HERRON.

THE WITNESS: Horses eat hay as well as goats; and mules do also.

H. S. WAGONER,

a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I live at Elsinore; am a farmer and am acquainted with Nick Bruno. I saw him on or about the 18th day of January at my ranch in the morning. He called there and I had a conversation with him. He asked for a grain drill. He rented the drill. He said he wanted to drill some grain, oats or barley. By "drilling" I mean planting. He did not take the drill away from my place because the drill was down at Mr. Hudson's. I told him he could have the drill if Mr. Hudson wasn't using it; and

(Testimony of H. S. Wagoner.)

I told my boy when Nick came after the drill to go with him down to Mr. Hudson's and show him how to operate the drill. And so he came in the afternoon. I don't know what time of day it was. If this drill was taken away by Mr. Bruno, it was on Saturday the 18th of January. Mr. Nick Bruno paid me for the drill. He was at my ranch on various dates, I believe, buying hay. I couldn't say that he was there on the 20th. He rented a team of horses from me on Monday, January 20th. He came and said that he would like to rent my team on account of not having power enough to pull the drill; that his mules were not strong enough. So the horses were not doing anything; and I said all right and he took them. He told me he was doing drilling with the mules and said he wanted the horses to help pull the drill to plant the grain; that he was going to plant the grain. He didn't say where it was he was going to plant it. He said he wanted to drill some barley or oats. Bruno came to my place alone on the following day, Tuesday the 21st of January, between 1 and 2 o'clock. He said he was through with the drill; and the boy had taken the drill home, or was taking it home. Just a few moments before this conversation he had brought my team back. He, Bruno, paid \$1.50 for the team and \$2. for the use of the drill. My boy's name is Richard Philip Wagoner. He will be at the high school until it leaves out.

(Counsel for all of the defendants announced they did not desire to cross-examine this witness.)

(Testimony of L. L. Mathews.)

L. L. MATHEWS,

a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I live at Wildemar. During the latter part of July and the early part of August I saw the defendant Herman Quirin at his house near Elsinore. I had a conversation with him, Quirin, my brother and myself being the only persons present. I asked Quirin about the section lines and the corners. I walked around to the section corner. The defendant Quirin did not go with me. I did not go up to what is known as the Bruno Ranch. Mr. Quirin was not there. I did not have any conversation with Mr. Quirin on the Bruno Ranch. But I did talk with him on a piece of government land about three-quarters of a mile west of Bruno's house; and he came to where I was and asked me if I saw an old mule, and I told him no, I did not. I asked him what they were building down there. I saw a pile of dirt down there, down by Bruno's house. It was about three-quarters of a mile away and I can't say exactly how much dirt I saw. It was quite a pile of dirt. I am not sure that I saw anyone working down around that pile of dirt. I couldn't say as to that but I saw a team there. The defendant Quirin answered my inquiry. He said they were building a cheese factory down there.

CROSS EXAMINATION

BY MR. HERRON.

THE WITNESS: The statement of Mr. Quirin seemed by me to be intended seriously.

(Testimony of N. S. Hotchkiss.)

N. S. HOTCHKISS,

a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I am in the lumber business; employed at Elsinore by the Dill Lumber Company, of which I am manager, having been manager for a year and nine months. I was in the employ of that company in July, 1929, and have been in their employ since. Am acquainted with the defendant Herman Quirin; am acquainted with the defendant Nick Bruno and am acquainted with the defendant Pete Connley, alias Pete Walker. I do not know Mr. Verda, the old gentleman sitting back there. I have had business transactions with the defendants Quirin and Connley. The date of the first time I had a business transaction with either of these defendants was in August in 1929, when I sold lumber to Herman Quirin. The first time Herman Quirin called to see me concerning the purchase of lumber he came alone. I recall an occasion when more than one of the defendants called relative to the purchase of lumber. That was on January 21, 1929, when the defendants Connley and Quirin came together to my place of business. At that time they made purchases. The government has the accounts receivable ledger sheets in its possession but I have the original tag. These are the original statements of the lumber sold, made out by myself.

(Whereupon Government's Exhibit No. 19 was admitted in evidence.)

(Government's Exhibit No. 19 reads:)

Sold to H. F. Quirin on January 21, 1930:

(Testimony of N. S. Hotchkiss.)

4 6x6-14 common rough; 16 2x12-10, the same;

8 2x6-16, the same; 15 lbs. of 30 common penny nails and 10 lbs. of 40 common.

THE WITNESS: That pile of goods was purchased by Herman F. Quirin and Connley. I see these gentlemen in the court. It was not paid for. The bill of goods was not delivered but was called for by a Federal truck. I did not get the license number and I do not know where that truck went with the lumber. I later on saw the lumber on December 22nd on the Bruno property 20 or 30 feet from the Bruno house on that property. The occasion of my seeing it was that I went to pick up that lumber and bring it back to our yard because of non-payment. I took it back to the lumber company's yard. This particular lot was never paid for. Herman F. Quirin shortly afterward called to see me concerning this lumber, to pay for the lumber secured on January 21st. Nothing else was said or done on January 22nd. I have stated all the conversation and all that took place at the latter conversation. I have with me a list of tags which contain items of building material that we delivered or that was called for by Mr. Quirin, for his house on the highway. I have not examined the house on the highway. I have examined the still and its construction so far as the lumber is concerned. Tag No. 971, dated January 8, 1930, is an item of lumber sold to the defendant Quirin. It is a receipt for cash received from Mr. Quirin, for lumber purchased in December, 1929. It does not indicate the kind of lumber purchased or paid for. Tag No. 796, dated December 20, 1929, is an item of lumber, which consists of four 2x12s-20, and

(Testimony of N. S. Hotchkiss.)

8x8s-14, purchased and paid for by Mr. Quirin. We have no record to show, and I do not know whether it was called for or delivered. Tag No. 728, dated December 16, 1929, represents 2x12s, 2x4s, and 8x8s, purchased and paid for by Mr. Quirin. I do not know where that bill of goods was delivered. Our records do not show, and I do not know which of the items were called for by Mr. Quirin or delivered, but the ones which we did deliver were delivered to the house on the highway. None of it was delivered to the Bruno property. I am not able to state whether the lumber itemized in bill No. 728 was delivered or called for, but it was taken away from the yard and paid for by Mr. Quirin. Tag No. 719, dated December 14, 1929, represents lumber sold to Mr. Quirin, and paid for by him, consisting of 2x12s, 1x6s, and nails. Tag No. 620, dated December 5, 1929, represents 4x4s, cement, and 2x12s, the 2x12s being timbers 2 inches by 12 inches, 10 feet long. These were purchased and paid for by Mr. Quirin. Tag No. 606, dated December 4, 1929, represents one roll of roofing and 10 pounds of nails purchased by Mr. Quirin and paid for by him. Tag No. 577, dated December 3, 1929, represents Sterling board or wall board sold to and paid for by Mr. Quirin. Tag No. 541, dated November 29, 1929, is a receipt for cash for lumber sold to Mr. Quirin during the month of October, 1929. This record does not show the quantity or character of the lumber sold during that month. Tag No. 385, dated November 18, 1929, represents finish lumber sold to and paid for by Mr. Quirin. Tag No. 67 represents 25 2x4s-12, common dimension lumber, sold to Mr. Quirin and paid for by him. Tag No. 6959, dated

(Testimony of N. S. Hotchkiss.)

October 3, 1929, represents finish lumber, hardware and nails, to the amount of \$6.73, sold to Mr. Quirin and paid for by him. Tag No. 6960, dated October 3rd, is a credit for merchandise returned by Mr. Quirin, and represents one pair of windows and a piece of finish lumber returned for credit. Tag No. 6910 represents merchandise returned by Mr. Quirin, consisting of two windows and three pair of casement sash. Tag No. 6909, dated September 30, 1929, consists of lumber, nails and windows sold to Mr. Quirin and paid for by him. Tag No. 6884, dated September 27, 1929, represents one roll of roofing and 2 pounds of nails sold to Mr. Quirin. Tag No. 6868, dated September 25, 1929, represents 2x4s and siding sold to Mr. Quirin and paid for by him. Tag No. 6859, dated September 25, 1929, represents 5 pounds of nails and 7 rolls of roofing sold to Mr. Quirin. Tag No. 6858, dated September 25, 1929, represents finish lumber sold to and paid for by Mr. Quirin, consisting of three 1x3s-10, clear Oregon pine, surfaced four sides, one 1x4s-10, the same, four 1x3 $\frac{3}{4}$ s-14, the same; one 18 the same, one 12 the same; three 16s the same; two 1x5s-14, the same; one 1x5s-12, the same; three 1x5s-16, the same; one 1x5s-10, the same; two 1x4s-16, the same; and 125 feet of $\frac{5}{8}$ x4s novelty siding. Tag No. 6857, dated September 25, 1929, represents four pieces of 4x10s wall board, 12 sevens, 16 eights, of wall board, 10 pounds of nails, 1 inch and a quarter casement stool, 1 sixteen, the same; two 2x6s-16, clear redwood; one 6 foot, the same; 150 feet 1x6 common O. P., surfaced one side; four 2x3-14, the same; four 16s, the same; one 2x6 select common. Tag No. 6823, dated September 23rd, is a re-

(Testimony of N. S. Hotchkiss.)

ceipt for a check for materials purchased by Mr. Quirin, paid up to date in full. Tag No. 6743, dated September 17, 1929, represents lumber purchased and paid for by Mr. Quirin. The number of pieces is torn off, but the size and length are 2x3-14, 2x3-16, 2x3-8, 2x4-10, 2x6-10, and 1x4-10 foot. No. 3 vertical grain flooring 100 feet. Tag No. 6625, dated September 7, 1929, represents two No. 2046 double hung windows, four No. 3021 light casement, one No. 3604 double hung window; one No. 4016 light sash, and one No. 1838 double hung window. I went to where the still was located on January 22nd, and examined the timber or lumber that was used in the making of the framework of the still. There are several items there in those tags that could be used in the construction of the still, that is to say, that similar timber of kind and dimensions were in fact used in the still. By that I mean the timbers that were used in the construction of the still were heavy timbers, such as 2x12s, 2x6s, and 4x4s, lumber of that character. I noticed Mr. Quirin had a new house near the road, and I noticed the size and character of the house, but I did not examine it to see if any of our lumber went into the house. I doubt if that size of house would use 2x12 joists. There were 2x12 joists in the still, but I could not identify them as having been sold by us. I did not examine the lumber in the mine shaft, and I do not know what kind of lumber was in there.

(Whereupon the 22 tags identified by the witness were admitted in evidence as Government's Exhibit No. 20.)

THE WITNESS: I examined the lumber in the still and found some 4x4 uprights there. I did not notice

(Testimony of N. S. Hotchkiss.)

any 6x6 square timbers as uprights in the still. The ones I noticed were 4x4s.

CROSS EXAMINATION

BY MR. GRAHAM.

THE WITNESS: There were some timbers and lumber in the still, that is, in the framework in the pit in which the still was located, which was lumber other than that which we sold to Mr. Quirin; in other words, there is a great deal of that lumber in there that we didn't sell to him. I would say that 95% of the lumber in the framework of the pit is lumber that we did not sell Mr. Quirin. The other 5% of the lumber used in the framework of the still might have been part of the lumber that we sold Mr. Quirin, but I cannot say that it is. Approximately 5% of the lumber that is in the framework could be part of the stuff we sold Mr. Quirin. I could not give the dimensions of that 5% of the various pieces unless I examined those tickets. The only pieces that I saw in the still framework that corresponded in size to lumber we sold Mr. Quirin were 2x12s.

REDIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I did not see in the framework of the still any 4x4s which show in these tickets. I did sell some 4x4s to Mr. Quirin, but I have not the tags that show that. I do not recall the number of feet that was sold of 4x4s, but I think it was approximately 20 pieces of 4x4s. In an examination of the still framework I did find lumber there that corresponded to that size and number. I don't know whether these 4x4s went into the making of the house on the Elsinore road. I did not find

(Testimony of N. S. Hotchkiss.)

any other timber in that still or in the framework of the still which I now recall as being timber that I might have sold to the defendants, or timber of like character. I did not notice the heavy timber that was used in the room where the boiler was located or the siding that was used in the room where the boiler was located. Siding is a thin lumber that is used to side up a house. When I say "siding" I mean house siding, the outside siding. I did not notice any of that in the still, but I am not in a position to say that siding was not used in the framework of the still.

RE-CROSS EXAMINATION

BY MR. BELT.

THE WITNESS: I am not familiar with the property known as the Quirin Ranch, nor with the house Mr. Quirin lived in. I have been on that property, but not while Mr. Quirin was living there. I did not look in the mine that was on the property. The lumber shown on these various items was sold to Mr. Quirin. In each and every instance it was not sold to Mr. Quirin. The cleats shown in the picture of the entrance of a mine are 2x4s. I have seen the house known as the Quirin house since it has been completed. The roofing consists of what is known as red composition roofing. It would correspond to the amount of roofing shown on these bills.

(Whereupon it was stipulated that the siding and casement windows shown on these bills went into the Quirin house.)

(Testimony of Fred R. Ranney.)

FRED R. RANNEY,

a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I am and for a little over two years have been employed at the Kelly Boiler Works, and was employed there on the 1st of August, 1929, as a book-keeper. As such I kept the books for Mr. Kelly. The book which is shown me is a day book, in which I kept the items each day as they came up, that is, a part of them. The checks that came in were usually posted directly to the journal, and then from there to the ledger. These entries were all carried from here to the journal, and are the original entries. Part of them were made by me and part by Mr. Kelly. Either he made the entry or called me to make it.

On page 132, under date of July 25, 1929, I find an entry as follows: "Account P. Walker, 916 West Third Street, 1 48-inch by 8-foot vertical boiler, with 10-foot stack, injector, oil burner, and regular fittings. In exchange." The extension is \$475, in exchange \$100, cash \$35, balance \$340. He satisfied us with cash or exchange to the extent of \$135, owing \$340 on the account. The total amount of the purchase price was \$475. I don't remember exactly who paid it. Most of the dealings were done with Mr. Kelly, and he carries the money in his pocket usually, and they pay it to him, and he tells me to give them credit for it. However, this particular \$35 is in his handwriting, so the chances are it might have been paid to him. The account has been paid. Personally I don't know what became of this 48-inch by 8-

(Testimony of Fred R. Ranney.)

foot vertical boiler with the 10-foot stack, or when it left the place of business. I didn't see it leave. I don't know where it went. It must have been taken away, or it wouldn't have been paid for. At page 135, the first account is in the name of P. Walker, under date of August 1st. The entry is: "August 1, 1929, P. Walker, two single cylinder pumps, \$70." At page 145, under date of August 28th, is the item: "August 28, 1929, P. Walker, exchange on boiler \$25, repair to pump \$5 total \$30." On August 30th, on the same page, is the item: August 30, 1929, P. Walker, three lubricators, \$10." The account was carried in the name of P. Walker. As I remember, in this particular instance they bought the boiler, and the original boiler that they bought wasn't the boiler that was delivered, and they picked out another boiler, which was \$25 more. That is the best of my memory as to the credit exchange of \$25. By the initial charge for boiler, exchange \$100 and cash \$35, is meant the boiler that was brought in, that they turned in toward the one that was purchased. I don't know who brought it in. Mr. Kelly handled the yard, and he has done that business alone so long, and he doesn't give anybody any authority, and nobody knows any prices, and when anybody comes in I refer them to him. When they come in the second time they go to him, because I know very little about the boilers.

At page 157 is the item: "October 1, 1929, P. Walker, 60 fire bricks." This was charged to the account in the name of P. Walker. On page 158 is the item: "October 3, P. Walker, small tank, credit by cash \$5," and then the item \$1 appears in direct line, that is, for the tank.

(Testimony of Fred R. Ranney.)

The credit of \$5 was paid on account, and I don't know who purchased it. It is in Mr. Kelly's handwriting, and is charged to P. Walker. At page 169 is the item: "November 1, charge to P. Walker, one steel base for boiler." And on the same page: "November 6, 1929, charge to P. Walker, use of equipment, \$5." On page 171: "November 11, 1929, charge to P. Walker, labor on base (boiler) \$5; labor on grates, \$7; two pokers at \$1.50, \$3."

I know Pete Valero. At that time he was working for Mr. Kelly as a boilermaker. On page 177 is the item: "December 11, 1929, charge to P. Walker, sixteen 2x6 tubes at \$1.50 apiece, \$24; one 2-inch tube expander \$15; labor 18 hours at \$1.75, \$31.50; repairing chain block, \$15." I do not know who performed the labor that is referred to as having been done on December 11, 1929, but the record shows that it was the labor of Pete Valero, 18 hours, at \$1.75, repairing chain block. I don't know—the chances are that was done in the yard. The books do not show where it was done.

(Whereupon the portions of the book to which the witness had referred, which had been identified by him, were introduced in evidence as Government's Exhibit No. 21.)

The instrument which is shown to me is a 2-inch tube expander.

(Whereupon the tube expander was marked Government's Exhibit No. 22 for Identification.)

(Testimony of Perfecto Valero.)

PERFECTO VALERO,

a witness on behalf of the Plaintiff, testified as follows, through an interpreter:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: On December 11, 1929, I was working for Mr. Kelly. He has this establishment of boilers on Mission Road and Brooklyn. On December 11, 1929, I was finishing a new boiler in the same house, that is, Mr. Kelly's house on Mission Road. Mr. Kelly sent me out in the country to do some work. I don't know the place. They took me out there in a truck at 4 p. m. I arrived at the place at 8:30 at night. It was a small house in a hollow, with some stacks of alfalfa hay in bales.

Government's Exhibit No. 8 is a photograph of the place to which I was taken. I went down under the ground under that stack to work. I saw a boiler and several tanks full of some kind of liquid. I don't know what kind. I did not work on the boiler. The boiler had a very little manhole, and I was too large. The man who took me out there said that he would go in, as he was smaller, and would fit in the manhole. I did not do any work there myself. I stayed there all night, until daylight, probably about 6 o'clock, when they took me back in an automobile. I did no work there. At the time I went out there on December 11th we took 15 tubes with us. We just unloaded them and left them there. I did nothing with the tubing myself after I got there. That is the only time I was there. When I was taken there by these men I spent approximately 18 hours

(Testimony of Perfecto Valero.)

on the whole round trip. When I went out there no one went along except the truckman. I do not know him. That is the first time I ever saw him. I never saw him working for Mr. Kelly. The truck was a large truck. I don't know the kind it was. The man who took me out there was a short man, with a thin face, and would weigh about 135 pounds. When I got out to where the still was located there were two men down below. They were the ones who were waiting there to fix the boiler. These two men were two men other than the one who took me out. One of them was quite stout, about 5 feet 6 inches tall, and would weigh about 200 pounds. I don't remember the other fellow. I couldn't see very well. I do not know anything about any Bruno house. I spent the night down below with the still, by myself. The other three men went off. In the morning another man came after me. I don't know who he was. He brought me back to Los Angeles. He was a short man.

Mr. Kelly paid me for going out there. He gave me \$10, and I gave him back \$1. He gave me \$9. The man who took me out in the truck went to the boiler and used the tube expander (Government's Exhibit No. 22 for Identification).

The still pit was lighted by gasoline lights with the pump. I only see one man in the courtroom whom I saw at the time I went out to the still.

(Whereupon the witness indicated the Defendant Connley.)

THE WITNESS: I first saw this man there at the still; he was there.

(Counsel for all of the defendants announced they did not desire to cross-examine this witness.)

(Testimony of Roland A. Godfrey.)

ROLAND A. GODFREY,

a witness on behalf of the Plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I reside in Los Angeles. I am a federal prohibition agent, and was such in the month of January, 1930. I made an examination of the mine located on Section 21, as shown on the drawing on the black board. I observed a pipeline leading into that mine. I made a very cursory examination of it. I climbed up on this sump, because at the time we arrived there the other three men and myself didn't know exactly the location of the still. I am referring to Mr. Peters, Mr. Rhodes and Mr. Noe. We climbed up on there, and I noted a connected pipeline coming out of this sump or mine shaft. I followed the pipe possibly 100 yards, not over that, away from the mine, and then I left the pipeline and went out further in the sage brush where I could see around the edge of the hill. From the point where I observed the pipe in the mine to 100 feet away from the mine it was connected all in one piece.

CROSS EXAMINATION

BY MR. BELT.

THE WITNESS: The pipe was completely connected. There was no break in the line as far as I walked down following it that night. I don't know how far the pipe went down into the mine, because I didn't go down in. Coming away from the mine it was solidly connected, as far as I walked along it, which was possibly 100 yards, not to exceed 100 yards. I didn't walk clear up to the end of it. I didn't see any end to the pipeline at all. I

(Testimony of Charlie Hudson.)

saw the pipeline going down into the mine, and I followed that for a distance of possibly 200 or 250 feet toward the Bruno Ranch. Then I left the pipeline where I could see past the hole. The pipeline ran in a general direction. As far as any big bends are concerned, there were none, except to more or less conform to the contour of the ground. After the pipe comes out of the mine, I am not very well up on those directions, but I believe it is in general about an easterly direction. There was no abrupt change in the direction of the pipeline, and no open end to the pipe out of the mine. I didn't see any open end of the pipe. I didn't note any particular connection on the pipeline. I am familiar with pipe fittings just in a general manner. I know what a T or an L would be, but I didn't notice any of those. I saw no right angle bend in the pipe.

(Whereupon it was stipulated that the still viewed by the jury might be marked Government's Exhibit No. 23 for Identification.)

Whereupon Government's Exhibit No. 22 for identification was admitted in evidence as Government's Exhibit No. 22.

a witness on behalf of the plaintiff, testified as follows:

CHARLIE HUDSON,

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I live in Elsinore. I know Mr. Bruno and see him in the courtroom. In the latter part of 1929 he came down and got a drill from me, a seed

(Testimony of Albert Kruse.)

drill. He said he wanted the drill to drill in oats on his ranch out there.

CROSS EXAMINATION

BY MR. HERRON.

THE WITNESS: He came to my house on the Saturday before they found the still there, that is, the Saturday before the 21st. He came right after noon dinner and took the drill away about 12:30 or 1 o'clock.

REDIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: This drill belonged to Mr. Wagoner, and I had rented it temporarily. Mr. Wagoner and Mr. Bruno came up that morning, and I wasn't at home, and so Mr. Bruno came up and told me that Mr. Wagoner and him had been up, and he told him to get the drill, so I let him have it.

ALBERT KRUSE,

a witness on behalf of the Plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I live at 130 North Avenue 20. I have worked for Mr. Kelly, of the Kelly Boiler Works of this city, for pretty near two years, and I last worked just the other day, and was laid off on account of he was short of finances, just yesterday, I think it was. I did mostly keeping up machinery, and stuff like that, and sometimes a little layout work—most of the layout work was done by the boilermaker, Pete, but sometimes I did that, and placing different things, like that, some-

(Testimony of Albert Kruse.)

times delivering—general work. There are so many people come in I don't believe I know personally a dozen names. As far as recalling the name "Connley" or "Walker" is concerned, I have heard them speak of it, but as far as knowing the name, I don't know. I was subpoenaed and taken down to the Bruno Ranch yesterday, and I seen the boiler base that I helped lay out, that is, that I put together for the welder to weld, but as far as knowing the man's name, I might know the man if I seen him. On the Bruno Ranch I observed parts of a boiler that were out in a field, that is, near the still. I recognized the base there thoroughly, and the boiler was simliar to the one that went out, but as far as any special mark on the boiler, I can't say that I recognized it. But I absolutely did recognize the base that I saw there. I had seen that base before yesterday in the Kelly yards, where we built it up. The welder was a good welder, but he didn't understand the placing of the material in place, and Mr. Kelly told me what he wanted, and I had to place the material of the base right where he wanted it, and the welder welded it. We had placed it, and it was done, and then the party came and had it changed. It was not like they wanted it, and Mr. Kelly had me change the base. The person that came there was a heavy, fleshy man. I don't know his age. If I am not mistaken, I would suggest he would be about 30, maybe 35, something like that. He was a large, heavy man, and he wore rather what you might call loose clothes—a pretty fair looking man. He talked absolutely to Kelly. He told him that he didn't want that base fixed that way, so the mortar would cover the rivets at the

(Testimony of Albert Kruse.)

bottom of the boiler, and for that reason he would have it changed, that is, he wanted it changed so the mortar would cover the rivets. You see the fire can't crack the rivets where there is mortar, because you loosen up your boiler, so the mortar was to keep the heat from striking the rivets, that is, I wanted the base covered with mortar and insulated to protect it from the fire. This man in my presence objected to the way in which I had secured this base, talking with Mr. Kelly, and gave his instructions as to how it should be placed, in my presence, to Mr. Kelly. When he talked about covering these rivets up with cement I wasn't more than 20 feet from him, and I had been working on that, and—at the time I forget what other work I was doing—and he talked with Mr. Kelly, and I heard him make the remark that that wasn't the way he wanted it, and Mr. Kelly right after that came up and told me we had to change that, and then he showed me where he wanted it changed. The man had gone then. I last saw Mr. Kelly yesterday morning. It was before work. I went up to his shop to see about getting settled up, and he was in the shop.

THE COURT I don't see why this court shouldn't order that man Kelly in here again.

MR. OHANNESIAN: Your Honor, in the absence of the jury, I may have something to state on that.

THE COURT: You may step out a few minutes, gentlemen. We will see about this.

(The jury retired from the courtroom.)

Exception No. 34.

MR. OHANNESIAN: Your Honor, yesterday some person came up to my office who was well acquainted with Mr. Kelly and, in fact, he has worked at Mr. Kelly's

(Testimony of Albert Kruse.)

place—not this gentleman—and he stated that after Mr. Kelly had gone back to his place of business he said, “Well, they didn’t get anything out of me; I couldn’t read or see, and they wanted to give me some glasses to read with, and I had my glasses in my pocket all the time. They didn’t get anything out of me.”

THE COURT: I was very well satisfied that Mr. Kelly was determined the other day not to make a witness in this case if he could help it.

MR. OHANNESIAN: I didn’t want to bring this matter up and would not have unless it was suggested by the court, because I thought it might in some way interfere with the due progress of this case, and would take it up at a later date. But I am willing to abide by whatever ruling your Honor wants to make. I do think Mr. Kelly ought to be brought before this court.

THE COURT: Well, when it comes to the question of identification, certainly Kelly ought to be able to help, better than this man. Would you know the man you saw talking with Kelly again, if you saw him?

THE WITNESS: Well, I probably would, although there is lots of people coming in there and the chances are I may and the chances are I may not.

THE COURT: He had his hat on?

THE WITNESS: I saw the man, as far as that is concerned, with his hat off and on.

MR. OHANNESIAN: I think I can clear it up; I don’t know. It is very unfortunate the witness is not here. I asked this man how many times this man objected to the way in which the base was being made and whether or not the same individual had been there be-

(Testimony of Albert Kruse.)

fore, referring to the defendant, and this man said he had been there several times. I think if questioned he will say the same individual was there on several occasions. I had not completed my examination of this witness.

THE COURT: Telephone Mr. Kelly and tell him he has to come up without further delay. We will not hold this court up.

MR. GRAHAM: May I suggest, Your Honor, we want to object to counsel making any statements in front of the witness before questioning him.

THE COURT: Counsel undoubtedly has talked to this witness before.

MR. OHANNESIAN: I personally have.

MR. GRAHAM: Exception. We move that the statement of counsel be stricken, the statement as to what he expected to prove by this witness.

THE COURT: There is no jury here.

MR. OHANNESIAN: Let it go out. I have no objection.

THE COURT: You may bring the jury back again. Who did Mr. Kelly make this boast to, that he would put it over on the court? You have his name, have you?

MR. OHANNESIAN: Yes, I have. I have his name. We will have him here.

MR. GRAHAM: If the court please, if we are going into this matter of Mr. Kelly, I think it should be done in the absence of this witness.

THE COURT: Why?

(Testimony of Albert Kruse.)

MR. GRAHAM: Because it will give the witness the idea if he does not identify some one he will get himself in wrong with the court.

THE COURT: Oh, no, no. That is not a valid objection.

MR. GRAHAM: I want the record to show we take an exception to the procedure.

THE COURT: Very well. You may have your exception.

(The jury returned to the courtroom.)

THE WITNESS: I have seen the gentleman whom I have described, and who questioned the manner in which the base was built, there at the Kelly Boiler Works two or three times. I am sure they drove in there with a Ford sedan, and I seen them in the office two or three different times, talking with Mr. Kelly and the book-keeper, Fred Ranney. This man was standing when he was talking to Mr. Kelly about the base. I have seen him sitting down in the office I guess a couple or three times, maybe more, and I have seen him walk from his car to the office. I never noticed him sitting down inside with his hat on. I saw him there, oh, I don't know—that must have been three or four different times; anyway I seen him two or three times in the office, and I seen him that time when he came down and spoke to Mr. Kelly about the base. I didn't pay any particular attention. From the witness stand it appears to me like this man between the two gentlemen in gray (indicating the defendant Connley).

(Testimony of Albert Kruse.)

CROSS EXAMINATION

BY MR. BELT.

THE WITNESS: I have testified that I overheard several conversations between the gentleman that was directing the erection of the base to Mr. Kelly. He didn't have either a high tenor or deep bass voice, but just ordinarily speaking, I think his voice was something like mine, not quite as hoarse as mine is.

Exception No. 35.

MR. BELT: Did he have an impediment in his speech?

MR. OHANNESIAN: Just a minute. We object to that as not proper cross-examination of this witness, your Honor.

THE COURT: Well, it is cross-examination on identification.

MR. OHANNESIAN: We didn't go into the question of his voice.

THE COURT: Wait a minute. I sustain the objection.

MR. BELT: Exception.

THE COURT: You may recall this witness, if you need him on this point.

(At the conclusion of the testimony of this witness the following proceedings were had:)

THE COURT: You are excused. We may call you back by telephone, if you will leave your telephone address, but probably it will not be necessary.

MR. OHANNESIAN: Do I understand the defense do not want him to remain? If they do, we will have him stay.

(Testimony of Albert Kruse.)

MR. GRAHAM: No.

MR. OHANNESIAN: We don't want it said afterward that we let him go before they were through with him.

THE COURT: The court has offered the defense the opportunity to call this man back; if they want him to remain, that is for them to say right now.

MR. GRAHAM: Does your Honor mean that he will call him back for further cross-examination?

THE COURT: No. The court may deem it necessary to call him back for further direct examination. I don't know yet.

MR. GRAHAM. That is all right. If we call him back, we won't have to put him on as our witness, will we?

THE COURT: You will have to put him on as your witness. You have exhausted your cross examination. You said you were through.

MR. GRAHAM: But on the one point as to which we questioned him as to the character of this man's voice, your Honor said he would not be permitted to testify as to that now, but we thought we might recall him later.

THE COURT: I thought possibly you might lay the foundation in your defense for making him your witness. That is what we had in mind. This voice proposition is yours, not the government's.

THE WITNESS: As to the time of this transaction, it has been quite a while ago; as far as remembering dates, I don't remember, but I should judge it has been quite a while ago, several months ago, something

(Testimony of Albert Kruse.)

like that, two or three months. It was more in the spring than in the winter or summertime; something like that; I don't recall exactly.

Exception No. 36.

MR. BELT: If your Honor please, at this time I am going to make a motion to have the whole of the testimony of this witness taken after the jury was excused stricken from the record.

THE COURT: Taken since the jury came back, you mean?

MR. BELT: While the jury was absent.

THE COURT: What he said while the jury was out is not a part of the record. In fact, he said very little, except to answer some questions as to a matter of which the jury can have no knowledge, and has no knowledge.

MR. OHANNESIAN: And I want the record to show that there was no testimony taken outside of the presence of the jury.

THE COURT: He offered no testimony for the record, while the jury was absent.

MR. GRAHAM: Here is the motion. It is a motion to strike out the testimony of the witness, given after the jury was excused and after they returned, on account of what happened in the presence of this witness in the absence of the jury.

THE COURT: Overruled. Save your exception.

MR. GRAHAM: I didn't want to state what happened, because I don't think that would be proper.

THE COURT: The court rules that nothing happened to the prejudice of the defendants.

MR. HERRON: An exception.

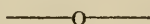
(Testimony of Charles Kruse.)

MR. GRAHAM: An exception.

THE COURT: The court is sitting here not as a mere umpire, but with the duty of finding what the facts are, and we have the right to send the jury out and make these inquiries, and we propose to do it.

MR. HERRON: An exception.

THE COURT: Proceed.



CHARLES KRUSE,

a witness on behalf of the Plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I know where the Kelly Boiler Works is located. I have worked there, and I know Mr. Kelly. I don't recognize anyone by the name of Connley that I know of. I was working at the Kelly Boiler Works in the month of January of this year. I saw two men there that I see here. In connection with my statement that I saw one man, it is the gentleman sitting next to the lady with the brown straw hat, the lady with the scarf on, the one with his hand to his mouth, (indicating the defendant known as Connley). I saw the defendant Connley more than once. I would say I saw him at least twice, because I saw him two different places. At that time I was listed on the books of the Kelly Boiler Works as a boiler helper. I did a little bit of everything. The first time I recall having seen Connley at the Kelly Boiler Works was just a little while after Christmas. I don't know the day exactly. A rush order came in to get some flues out, anneal some

(Testimony of Charles Kruse.)

2-inch flues, and Mr. Kelly had the flues gotten out of the racks and annealed, had them tempered on the ends, the temper taken out, so they could be rolled down. There was present at that time Henry, the blacksmith, who was there, a couple of mechanics, Pete Valero, and the welder, named Albert Aguilla. I was there, and Lou Taylor was there, and my brother was there, and Mr. Kelly was there, and that gentleman referred to as Mr. Connley was there at that time. Mr. Kelly had the flues cut to the proper length, and then put in the furnace. He has a retort furnace that he keeps them in and anneals them. And he came back later, and the other gentleman came with the truck, and Mr. Kelly had them load the flues in the truck. The other gentleman was the young man sitting to the left of the lady (indicating the defendant Bruno), the one with the small mustache there. They loaded the flues on the truck, and I went on about my business. I saw them there. Perfecto Valero had been working on a boiler in the shed, but he went away with those gentlemen in the afternoon; the hour I don't exactly recall. I think the tubings I have referred to were 2-inch tubings. I don't know how many there were, but I don't think very many, perhaps a dozen.

CROSS EXAMINATION

BY MR. HERRON.

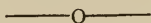
THE WITNESS: This incident occurred along the 1st of January of this year, in and around the yard and the plant. I believe there was a driver that came with the truck to get the flues, a Mexican, I believe it was that was doing the driving, and I am not positive,

(Testimony of Charles Kruse.)

but I think there was a man that had a leather coat on. Connley was there, but he wasn't in the truck. It is very hard to say how many men I saw out of the truck, because there was quite a number of people came in there, and the machines there at the same time—that I couldn't connect them up together; there might have been different machines. They might not have come all together. I took it for granted that this other gentleman was with Mr. Connley, because generally when you see two people standing around together, when they are supervising a specific job, why, you take it for granted that they are together. I have seen Connley twice, perhaps three times, but I couldn't swear that I had ever seen the other man before that day. I do not know, but I believe I have seen the other man once since, at Kelly's, where we worked, when they brought back some skids that they used and an iron saw horse and some machinery that they had taken away. I was sitting here in the courtroom during the time Mr. Kelly testified. This man, Mr. Bruno, was not pointed out to me by anyone in the courtroom. I feel reasonably certain that this is the man, because he reminds me a good deal of one of my former employers. It was less than four months ago that I saw him. I did not talk with him. I couldn't say that I heard him talk. They were quite some time off and on around the plant, altogether, I should judge an hour and a half. All I know, as fixing the date when I saw this man, was that it was when they got some flues. I don't keep a memorandum of anything like that, but there were things that took place at that time or a few days afterwards that made

(Testimony of Thomas W. Noe.)

me recall. This was stamped on my memory along in the 1st of January, 1930. I couldn't say whether there would be anything in the books, that would enable me to fix the time, and I don't know anything about the purchase of the tubes, but I know when they were put on the truck and taken away; in other words, I can't recall just what date it was, but I do know it was some time in the first of January, 1930, and I know it was the same time that Valero went out to repair a boiler for Walker; it was that date. I think it was the first of some month—I am not positive, but it was the day that Mr. Valero went out on the truck with tubing.



THOMAS W. NOE,

a witness on behalf of the Plaintiff, testified as follows:

DIRECT EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I am an investigator, have been one since 1926. I know where the Bruno Ranch is located. I had occasion to go there. I went out there, I believe, on January 21st. The officers that had made the arrest called our office, and we left immediately and went to the ranch. I went down to the pit where the still is located and made a very casual investigation there. I observed lamps there. There were three gasoline lamps that pumped up air, had mantles on them. I was at the still all night, and I used one of the lights going from the house, from the Bruno Ranch house down to the still; I lit the lamp myself and carried it on some

(Testimony of Thomas W. Noe.)

seven or eight trips I made from the house down to the still. While I was there I observed a number of large galvanized tanks. There were three. Two of them had something in them. It was alcohol. I know it was alcohol because I drew the alcohol out of the pipes and filled up 148 five-gallon cans of alcohol. We loaded it onto a truck and brought it to Los Angeles and put it in the warehouse.

Examining Government's Exhibit consisting of two tins, they are the same tins that we loaded onto the truck. These 146 cans of alcohol are still in the government warehouse. The mash was poisoned and left there. We brought out a five-gallon can for analysis.

CROSS EXAMINATION

BY MR. BELT.

THE WITNESS: Referring to these gasoline lamps, I had occasion to light one of them in the pit. It had two mantles on. With reference to the particular one that I carried, there was only one mantle on it that would burn. The other mantle I couldn't get to burn but the one mantle on the one I carried burned very nicely. I lighted this down in the pit, right by the side of the still, I would say probably six feet from the still. It made a very bright light. It couldn't light the whole room on account of the large wooden vats in it. It lit all of the room in which there was any space to be lighted. Assuming that I stood 15 feet away from it, my face would be visible to you very readily in that light. I carried that lamp in my hand on several different occasions.

(Testimony of Thomas W. Noe.)

(Whereupon the plaintiff offered in evidence 146 tins of alcohol, and also something in the neighborhood of 50 gallons of mash.)

(Whereupon the plaintiff announced that it rested.)

(Whereupon the jury retired while the following proceedings were had.)

Exception No. 37.

MR. BELT: At this time, your Honor, the defendant Pete Connley moves the court to direct the jury to return a verdict for him on the following grounds:

First, no offense against the United States is charged in any of the counts in the indictment.

Second, the evidence adduced at the trial fails to prove the conspiracy charged in count number one of the indictment.

Third, the evidence adduced at the trial fails to prove that the defendant was at any time connected with the conspiracy charged in the first count in the indictment.

Fourth, the evidence adduced fails to prove that the defendant was guilty in the manner and form as charged in count one in the indictment.

Fifth, the evidence adduced fails to prove that the defendant has been guilty in the manner and form charged in count two of the indictment, three, four, five and six.

THE COURT: Motion overruled.

MR. BELT: Exception.

Exception No.

MR. BELT: At this time, your Honor, the defendant Herman Quirin moves the court to direct the jury to return a verdict for him on the following grounds:

(Testimony of Thomas W. Noe.)

First, no offense was committed against the United States, as charged in any of the counts in the indictment.

Second, the evidence adduced at the trial fails to prove the conspiracy charged in count number one in the indictment.

Third, the evidence adduced at the trial fails to prove that the defendant was at any time connected with the conspiracy charged in the first count in the indictment.

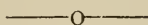
Fourth, the evidence adduced at the trial fails to prove that the defendant was guilty in the manner and form charged in count one of the indictment.

Fifth, the evidence adduced fails to prove that the defendant was guilty in the manner and form as charged in count two in the indictment, three, four, five and six.

THE COURT: The motion is overruled.

MR. BELT: Exception.

(Whereupon the jury returned to court.)

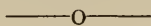


TESTIMONY ON BEHALF OF THE DEFENDANTS.

(Whereupon it was stipulated by and between counsel for the plaintiff and counsel for each of the defendants that a man named Bryant, if called to the witness stand on behalf of the defendant Nick Bruno, would testify that during the entire month of December, 1929, he was with the defendant Bruno; and that Bruno and he, Bryant, were attending Mr. Bruno's goats in Cottonwood Canyon some ten miles from the Bruno ranch; that Mr. Bruno was there continuously with him, Bryant, during that entire month and did not leave that ranch

(Testimony of Joe Verda.)

for any purpose and did not come to Los Angeles for the purpose of visiting the Kelly Boiler Works or for any other purpose.)



JOE VERDA,

one of the defendants, testified in his own behalf as follows:

DIRECT EXAMINATION

BY MR. GRAHAM.

THE WITNESS: I am one of the defendants in this case. I live with one friend of mine down by Lincoln Park. I am 58 years old. I do all kinds of farm work. I know a man named Frank Romero. I first met him about five days after they got me, that is, before they arrested me. I met him on Second and Main Streets in Los Angeles in the afternoon. I was just looking around. I looked for a job. I was out of a job at that time. I never had no job and I looked for work then. There were a lot of people there at an employment agency, for I was looking for work. I was right there on the sidewalk; and he told me, "Do you do any farmer work? You can do farmer work?" I said, "Yes." He said, "I can get you a job." I said, "I can't do any heavy work. I have got to have light job." He says, "All right. We are giving you a light job. I will put you on a ranch and you can keep a ranch and tend to the mules." He said he would pay me \$30 a month and board. I accepted the job. He told me if I wanted a job he would be at the same place the next afternoon, which was Friday afternoon about 1 o'clock.

(Testimony of Joe Verda.)

I went there at 1 o'clock the next afternoon, which was Friday. The first time I saw him was Thursday. He told me, if I wanted the job, he would pass by here Friday afternoon and pick me up. I met him there Friday afternoon and he took me on the machine. He buy some groceries and take me in the machine and take me over to the place where I was arrested. We got there about 4 or 5 o'clock the afternoon of the Friday before I was arrested. I did not do any work that evening. There was no one else there when I got there. He showed me the room in the house and said he had a bed in there. He told me to sleep in the dining room and told me I sleep until somebody come to the ranch and you help him. He said somebody come to plant barley and oats and you help him and do what the man tells you. The man brought his team over there about 5 o'clock. He came there and brought a drill in there and go away, that is, a grain drill with which to plant grain. It was a big drill. He brought it in about 4 or 5 o'clock Saturday afternoon. I see that man the next morning again and I had the mules ready to work as he had told me. That was Sunday morning. That man said he was Nick Bruno. He was the defendant Nick Bruno. He was the man that brought the grain drill there. Mr. Bruno started to work with the mules and the drill, and I have a hoe and I pulled out all of the brush in front of the grain drill so the drill could run smoothly. We worked all day Sunday until about 5 o'clock. Bruno left the drill there and went away. He said the mules were too poor to do the work. I sleep in the same bed in the dining room. And the next

(Testimony of Joe Verda.)

morning Mr. Bruno came again and brought a team of horses with him. That was Monday morning. Mr. Bruno and I worked the same way Monday as we had on Sunday, except that we used the horses instead of the mules. When we started to plant with this grain drill we started over there by the front gate. On Monday afternoon Mr. Bruno and I ran the grain drill around the haystack. Mr. Bruno and I were both around there at the same time. When we got to working around the haystack we saw the holes around that haystack. It made a stink, but we could see something down in the hole. There was a boiler like water. That was the first time I had been near that haystack. Up to that time I did not know what was under the haystack. I did not know there was anything under the haystack. We did not finish with the planting Monday afternoon. We had a piece left. We planted the grain on the piece that was left the next day. When Mr. Bruno and I saw this hole under the haystack and saw what was in it Mr. Romero came at that time. I saw Mr. Bruno get into a fight with him; get into an argument. After this conversation between Bruno and Romero we went on doing the work on the ranch and planting grain until 5 o'clock. The next morning, which was Tuesday morning, we finished the little patch which was left over from the night before, that is, we finished planting the grain. As soon as we finished Mr. Bruno took the drill and the team of horses and went away. That was about 11 o'clock in the morning of the day I was arrested. I was arrested about 2 o'clock. Mr. Romero was there that day. He was there the day before and

(Testimony of Joe Verda.)

the next day I see him again. After Mr. Bruno and I saw the still under the haystack on Monday afternoon I saw Nick Bruno and Romero talking together; and Romero stayed there after Mr. Bruno go away. He stay there, him and another man, him and one or two men. After Mr. Bruno went away I cooked my soup and then I went to bed. I went to bed right after I ate my soup. There was nobody in the house after I went to bed. I hear somebody talk outside the house, Romero and a couple of more men. I never went out there to see what they do. I didn't go out because I was kind of afraid and I don't want to be hurt. When I see they are there I don't want to be in trouble. I think I had better stay in bed. I don't want to be in trouble. The next day after Bruno left with the grain drill I saw about four men around the place in the morning. I saw Mr. Romero there. The only other man that I saw there whom I know is that fat man over there (indicating the defendant Connley.) He never told me his name. He gave the officers the name of George Walker. Romero and these other men' came there Tuesday morning. I saw a big truck bring some lumber there. He took the lumber over there, back over there where he was going to make a foundation for the tank there to the reservoir. George Walker, the fat man, said that, he and Romero. They moved lumber in there and started to work. I saw these two federal officers when they drove into the place in their car. I saw them come in inside of the fence. At that time I was at the reservoir talking to Romero. Mr. Romero said, "Go over there and stop that man and see who it

(Testimony of Joe Verda.)

is." I walked over to them but he no stop. He go on to the house. I took my handkerchief out of my pocket like this and say, "Stop." But they never stopped. They went around me and they go on to the house. I follow him back to the house. When they got up to the house they got out of the Machine and they showed me the badge and says, "I am an officer," and shook hands with me, and says, "We are officers and want to search the house." I said, "All right. Go ahead and do it." They searched the house and they showed me a big copper can that was in court the other day; but I never saw it there before. He found it in a little room on the other side of where I sleep; not in the room I slept in. I had never been in that room. After they found that can the officer told me, "Come on and follow us." He said, "We want the rest of the things." He said, "Come on. Follow us. We want to know some more things." I don't want to go with him because I get in trouble. I follow him anyhow. I go along. I never leave him alone. I told him, "Leave me alone. I got nothing to do with this thing." One of the officers and the fat man went down under the haystack where the still was. They stayed there about 5 minutes; I don't know just how long. When they came out we was on top and we go back in the house again. I saw one of these other men that had been there at Mr. Romero's; and he take me over there and one man go away. One man take the truck. He go away. He drive the truck away when he come—when he see the officers. When the officers was in the house searching the house he go away with the truck and the other men

(Testimony of Joe Verda.)

go away, too. They went in the field, across the field. When we came up with the officers away from the place where the still was he took us back to the house. I told the officers, "Let me go." I am kind of scared, you know. I don't like this kind of business. I don't know anything about it. Finally one of the officers left and went away for a while and one stayed there with me and the fat man. The fat man told me to go over there to shut the pump while the officer was gone. When I went down to shut off the pump I saw those men that had run away. They were on the hill, on the side of the hill. He do like this and I do like this to him (illustrating). He waved at me and I waved back at him. The pump that I went down to shut off was a little pump that is about 200 feet from the house, back of the house between the water reservoir and the front gate. When I finished shutting off the pump I saw two of these men on the hill. When they waved at me I waved back to them. I waved my hand because he do it to me like that. He told me "Good-bye," and I told him "Good-bye." That is all I meant. He waved "Good-bye" to me and I waved "Good-bye" to him. I never saw him again after that.

CROSS EXAMINATION

BY MR OHANNESIAN.

THE WITNESS: I was glad to see them go. The first time I went out to the ranch was about 1 o'clock on Friday. I got there about 4 or 5 o'clock. I think there was a little more sun at that time, about one hour or so, half an hour. When we went out Romero and I took some groceries out. We took a good box full. He did

(Testimony of Joe Verda.)

not tell me there would be some other men there that he wanted me to cook for. I did my own cooking but did not cook for anybody else. I saw that long table in the dining room. There were several chairs there, too, two or three rocking chairs. There was nobody else in this dining room besides myself. Nobody went in there while I was there. That one hour I was there that first day I did nothing except to look around. It was a new place for me and I looked around. I seen a haystack over there and I seen the mules in there. I saw a large haystack. It was covered over with tin. I see a fence around it. That is the first afternoon I was there. I did not notice that there were two fences, one nearer the stack and one farther away. I no pay attention. I see one big fence in there but I don't see the other. I saw some things that night up there to one side of the stack but I don't know if it is a boiler or not. I no go there at all. There was nobody there at all that first afternoon. There was nobody there watching the haystack and all that. When we got there Romero no stay long. He stay about half an hour and he go away. When he went away he say to me he gived to me \$3, and he say, "If you ain't got enough to eat with this, you will try to buy some." I did not ask him, "What is this haystack you got over here?" The next morning I get up about half past six. When I first got up I did nothing except to get breakfast for myself. Then I went outside and looked around again. I saw this haystack and a pipe to the right there down in the hole. The Bruno house is on the hillside, a little high, and the haystack is down below about 200 feet from the Bruno house. But I saw it again the next morning. There

(Testimony of Joe Verda.)

was nobody around and I didn't know what it was and I didn't care what it was. I stay there until noon all alone. I did not go out there at noon to see what this haystack was. I didn't go inside of the fence to see what was down there. It didn't interest me at all. There was nobody watching that still, which happened to be a still and a haystack and the alcohol and everything, while I was there. The afternoon that I went out there and the following day there was nobody there but me. I was there all alone. It didn't interest me to go and see what that haystack was. Romero don't tell me nothing. He didn't tell me nothing at all. "If you want a mule—" I say, "Why the haystack is?" I asked him that the night when I got there. He says, "None of your business. That is my business." I took it for granted it was none of my business and that it was his business. I didn't go there. The reason I didn't go there the afternoon I got there was because I was afraid to go out there from what Romero told me. The next morning I didn't go around there at all because Romero tell me to keep away. He didn't tell me what was there at no time. He told me it was none of my business to go down to the haystack. Government's Exhibit No. 5, a picture, is the way that haystack looked the afternoon I went over there. I saw that. I looked here. I never looked here and there. That is what I say. He tell me to keep out of there and I keep out. That second day that I was out there I do nothing but pull some brush out of the field. I worked in the field near the Bruno house. They were there by the gate. He tell me he going to start a trench. I know where the mine hole is.

(Testimony of Joe Verda.)

This gate is between the mine hole and the Bruno house, a big fence and a gate. I bring some brush in there. I stay there all day. I work there all day. While I was working there near that gate I never seen anybody go up to the still, up to the haystack. I had my lunch at the Bruno house that day. I stay there. For lunch I take off all the time I want. Nobody there. I took my own time. I looked around to see what was going on. I didn't have much to do. I was not curious to know what was down under that haystack. That didn't bother me at all. I was told to keep away and I kept away. I didn't know what was up under that haystack. Nothing but hay. I can't tell you nothing because I never seen nothing before. I don't know. The second day after I was down there at the gate I came back for my lunch and I had plenty of time during the lunch hour. It didn't occur to me—I didn't think for a moment, "I wonder what is down under that haystack?" I didn't think about that. I didn't bother about it at all. I didn't care what was there. For all I know it might have been dynamite to blow up. Maybe that is why he told me to keep away; I don't know. I think it was. The second day I was there was Saturday. In the afternoon I continued to pull brush and work around, to pull some brush out. I pulled some brush out of the field. I had no special work. I had plenty of time in the afternoon. I looked around to see what was there. I saw the shed near the Bruno house where there was some big drums. I see when I feed the mules the hay. When I feed the mules I see some hay. I see all of the things in there. I saw the big gasoline drums there,

(Testimony of Joe Verda.)

lots of them. I also saw one or two barrels. I don't know what was in them. I touched one but it was empty. I did not see the feed tank up on the hill, that is, the tank right in front of the shed, buried in the ground. I never noticed that. I never went over to the mine at all. I see the mine last week when we all go but I never saw it before. I did not drive this team with this drill. This man named Nick Bruno drove the team. As the drill went back and forth planting the grain I followed it. I get in front of him and pull all of the brush. In working that drill I did not see Bruno run over a long iron pipe. I never seen any pipe. He never catch any pipe. He didn't go around any pipe, so he wouldn't catch it. He go right away to, and I never see it. He went west and north I think, both sides; and I didn't see him run into a pipeline. I was with him on Sunday the first day, the second day, Monday, until Tuesday. And Bruno didn't run into any pipeline. Romero did not tell me where he live. He tell me he lived in Los Angeles. I did not take his address. He tell me he is in Los Angeles but he no give me no address. He paid me for two days. If he would not come to pay me and I no get anything to eat, I go away. He paid me for two days. I asked him for his address but he did not give it to me. He says, "You don't need me." He says, "You can't find my house anyway." He didn't want me to know where he lived. That was when I first met him out there. But I drove all the way to Elsinore with him. On the way he tell me what kind of business he was in. He said, "I am going to plant some alfalfa on the ranch. You

(Testimony of Joe Verda.)

are going to work with me." And he no plant no more alfalfa. He planted grain. I did not see anybody working down there around the haystack on the third day I was there. I did not see a big hole in front of the haystack such as is shown on Government's Exhibit No. 8. I did not see anybody going in and out of the ground. If anybody had gone into the hole while I was by the house, I would see him. During all of the time I was there, the four or five days, I saw nobody working by the stack. I would go to bed about half past seven. There was nobody in the house at half past seven. I did not see anybody going down to the haystack. I did not see anybody come in with trucks and haul anything out. A truck with some lumber was there. That is the only truck I seen. I don't know whether anybody came there at night. I no hear any noises. I heard a noise Monday night when Romero was in there with two more men. I heard some noise outside. From the time I went out there Friday up to Tuesday I did not see anybody working around the haystack either day or night. During this time no one slept in the house but me and no one ate in the house but me.

When the officers went down there by the still I went down by the still. I never go down in the hole. I went along with the officers. I no want to go. He tell me to go along. Up to the time the officers took me there I hadn't gone there. The reason I kept away is because Romero tell me to keep away. I got a scare. I thought there was something wrong down there. I never tell anybody, "Now, I think there is something wrong down there at the haystack." Nobody was with me. There

(Testimony of Joe Verda.)

was no one to tell. I did not drive over to the neighbors at all. No neighbors come there at all. I saw Bruno the first time when he brought the drill in there. I did not tell Bruno, "Now Romero told me to keep away from the haystack." Bruno no come by the house. He bring the drill. He bring the drill for planting the grain. He put it inside the gate in the field and he came in the morning again. In the morning I did not tell Bruno, "Romero told me to keep away from the haystack." Of course, he starts planting on the other end. Nick was on the other side of the house from the haystack and I never saw the haystack. No one else came there to plant grain besides Bruno. He is the only man that planted the grain. Mr. Bruno put in the grain between the Bruno house and the gate and also the grain in between the Bruno house and the still. I saw him use the drill on the field in front of the haystack, too, clear up to the fence. after he had done that I told him this Romero says, "No go by the haystack." He says, "What is the matter with it?" I said, "I don't know what is the matter." He go over to look in the hole and me go over to look at it. as soon as I plant the grain inside of the fence, me and Bruno go and look at it and me see what they have in there. That is the third day after I got there on Monday, Monday afternoon. We no go in the hole. We looked down into this opening here on top. We didn't go down into the hole because we kind of afraid and we wanted to get out as soon as we can. I seen water. I see some water boiling there. It wasn't hot. I didn't feel any heat there. I see the boiler there. I saw water boiling. I could smell it, too. There was no stack in

(Testimony of Joe Verda.)

there at all. I never see it. I didn't look at all the openings that were around that haystack.

Exception No. 38.

Q BY MR. OHANNESIAN: Did you go around there where the stack is, the boiler stack, the one that counsel here called attention to? Did you go around where that big opening was where there was a stack sticking up almost out of the ground? Did you see that stack right over the boiler?

A I don't see no stack in there at all.

Q You never saw it. Did you look at all the openings that were around that haystack?

A I never see it.

Q You weren't interested, were you? You didn't want to see it.

MR. GRAHAM: We ask that be stricken out and assign that as prejudicial error.

MR. OHANNESIAN: We withdraw the remark.

MR. GRAHAM: And especially in view of the fact the government's own witnesses testified that stack wasn't exposed at the time of the raid.

MR. OHANNESIAN: There was no such evidence as that, and you know it. Why do you want to misstate the facts when you know better?

MR. GRAHAM: We assign that as error on the part of the United States Attorney and move it be stricken out.

THE COURT: The United States Attorney will withdraw the remarks.

THE WITNESS: I saw two openings there. The first opening that I looked through was here by the front.

(Testimony of Nick Bruno.)

by the gate. I see the water boiling it smelled bad. I think it was mash. I don't know what kind of mash it is. I don't know what mash is. I never saw a still before. I do not know what a still is. I do not know what that was under that haystack. I don't know what a still is used for. They make alcohol, I guess. I found that out because I heard them talking here. That is all. This is the first time I heard a still was used to manufacture liquor, when I was in court. Before I came into court I didn't hear of a still and didn't know what a still is used for. I am 58 years old. I never heard of a still and don't know what a still is used for.

NICK BRUNO,

one of the defendants, testified in his own behalf as follows:

DIRECT EXAMINATION

BY MR. HERRON.

THE WITNESS: My name is spelled in the Italian fashion, N-i-c-o-l-o B-r-u-n-o. During the month of July, 1929, I was living on my ranch, where the court and jury went, and where they examined that still. I am buying the ranch on contract. I first met a man by the name of Francisco Ramirez on the 20th of July, 1929. Prior to the time that I met him I was in the business of raising and milking flocks of goats. I was a goat herder. I got 1200 goats now. In June or July of 1929 I had 800. During the month of June, 1929, I rented a team of horses for hauling hay. The hay was all in a small pile, and we was hauling close to the house,

(Testimony of Nick Bruno.)

pressing. In other words, I was hauling hay from my field up to the baler to press it close to the house. I rented this team of horses from Mr. Amsbaw in June. In July Mr. Ramirez and two or three men came to my ranch and told me they want to rent your ranch; I told him, what are you going to do with my ranch, and he says, "We going to plant alfalfa here." He says, "We give you \$400 a year." And he told me we not got enough water here to plant alfalfa. He says, "Well, we going to dig a hole by those trees, those willow trees, we are going to put a pump, and pump some water and irrigate the alfalfa." They told me they want the ranch for a year. Well, I says, "If you want it for more than a year, I will let you have it." That was the same day. They say, "We take him for a year, and then if we need them any more, we renew the lease." I agreed to rent it to them for the \$400. They says, "We come back in a few days from now." They come back after a few days. The first time was July 20, 1929. The second time it was the 22nd or 23rd, two or three days after. I don't remember exactly. On that day they come down there and they says, "Well, we going to start digging the hole right away to get water, and we want to buy a team of mules from you and a scraper and a disc and harrow." I had a team of mules and a scraper and a disc on my farm before they came there. They bought the team of mules from me and the tools I had on the ranch; they paid me \$65 for the team of mules, \$25 for the scraper and the harrow and the disc, because they was old tools. At that time they also bought a ton and a half of hay which I had in the barn. The barn is that little gal-

(Testimony of Nick Bruno.)

vanized tin shed which has been there three years. I make it myself. I had a ton and a half of hay that I make on my ranch. I sell it for \$30, a ton and a half, good hay. As I have said, in June I got a team of horses from a man by the name of Amsbaw to carry my hay in from the field to bale it. At a later time I rented another team from Amsbaw. After Frank Romero bought my team and the tools he says, "Well, this team can't do all the work. We want you to find another team. We don't know nobody here." He told me this mule too poor, can't do all the work. "I want you to find a team. I give you a man and you go with him, and you know somebody around here who got a team, and we rent." And he give me a man and I went to the city. We used to know this fellow here. I know him the first time, and he went down, this man need a team to deliver some dirt, and this man all right, I says, if you let him have it. And he let us have the team. He drive the team home, and I went home to the same ranch where the still later was. When I mentioned Ramirez I meant the man whom I also called Romero. It is the same man. "Ramirez" is a Spanish name, and "Romero" is Italian. I saw Ramirez there after I got the team. I got the man down there. He took the team and put them in the corral. That was in the afternoon about five or six o'clock when the team reached the ranch. Ramirez came to me about the 1st of August with respect to renting the ranch. Ramirez came down there, him and another two or three men. He says, "We got the lease ready. You go and sign the paper and I give you the money." Then I signed the paper and he gave me a

(Testimony of Nick Bruno.)

hundred dollars. I said, "Why do you give me a hundred dollars when the deal was for \$400?" He says, "I never tell you I am going to give it all at once." He says, "I will give you \$200. We will split the difference. Then I will not pay you for six months." Well, he says, "I give you another hundred on the 1st of February and another hundred on the 1st of May." Prior to the month of July I had a herd of goats on those premises. I moved it to the Sill place because I have had no feed and no water, and I move them every year down there, down to the Sill place. The people that own that place is the Tamascala Water Company, and the house in which the corral is—that belonged to Sill. I moved the goats over to the Sill place—it was the 1st of June. I signed the lease for my ranch on the 1st of August. They came down there, Frank Romero and two or three men, and they says, "We got the lease ready," and he says, "This guy here is a notary public," and he says, "He is a notary public here. We have got everything complete. You go sign it and I give you the money." My wife used to live there on the ranch with me. We left there to move over to the Sill Ranch the 1st of August. Before I left the Bruno Ranch Frank Romero told me, he says, "Bruno, we need some more hay over here. This hay no enough for feeding the mules. We want you to buy a couple more loads of hay." I used to know a fellow named Ed Funk, and I tell him, "You have got some hay to sell?" He says, "Yes. How many tons you want?" I said, "Eight or ten tons." And we make the deal for \$10 a ton, and I sell him bales, Frank Romero, for \$12 a ton. I charge \$2 more for hauling

(Testimony of Nick Bruno.)

because I rent a truck from a fellow who used to buy my goat manure. It was a Moreland truck. I rented it from Joe Madrigal. I took it to Ed Funk, and I get two or three loads of hay, and then my place down there one load. Ed Funk came with me and help me. At the time Ed Funk came with me and helped me some work had been done around where the willows were. A couple of Mexican fellows and the boy was digging these trees out, these willow trees, where they said they was going to dig a hole to pump water. And I left the Bruno Ranch about the 1st of August and went to the Sill Ranch. We stay at the Sill Ranch until I move the goats on the 1st of June on the Sill place, and we stay there until August, about four-fifths of August; then we move to Cottonwood Canyon. There was better feed down there. That is what I do every year, change the goats two or three times a year. My own ranch is about ten or eleven miles from Cottonwood Canyon. To go from my ranch to Cottonwood you go from Elsinore to Murietta Hot Springs. After Romero gave me \$200, the next time I saw him was when he come back and says, "Bruno, are you going to find me a drill?" That is the 17th or 18th of January. He told me he was going to seed the barley on the ranch. I said, "You tell me you are going to plant some alfalfa, and now you want to plant barley." He said, "I no got enough water yet." I says, "All right," and I went to a fellow close to Elsinore down there and I rent a drill. The fellow that owned the drill was Hudson. Mr. Hudson had a drill in his home. but he never used to own it. He was going to seed himself, and I went to Wagner's home. I buy hay from him this

(Testimony of Nick Bruno.)

year, too, and I used to know him well. I says, "Have you got the drill?" And he says, "Yes, I have got the drill, but another man use him." He says, "I don't know if he use him or not." He said, "You had better go to Charlie Hudson. If he is through with that drill, then maybe he give it to you." Then I went to Charlie Hudson and I tell him about it. He says, "Yes; I can't plant in my ranch." He says, "It is all wet. The dirt is not so good. I give it to you and you bring it along in two or three days." I says, "Sure." That was the 18th of January, on Saturday afternoon. That afternoon I took the drill down to my ranch and left it by the front gate. At the time I reached there it was late. I can do nothing the same day, and I left him inside the gate and went back to my ranch. I went back there the next morning and I saw Frank Romero and Verda. Frank Romero told Verda, "You do what this guy tells you. Help this guy put seeds." Then the old man had a shovel or something to cut those few brushes in the field, and he was cutting brush and I was seeds with the team. That was Sunday. I started about 7:30 in the morning and worked all day long. That day I seeds the front of the ranch. The next day I went to the other side of the ranch, and when I work on Sunday the mule was awful tired, you know, and I says, "I no think this mule going to pull the drill any more," and I went to this fellow who owns the drill and I rented the team—his team. After I rented his team I took them back and hitched them on the seeder and went to work with the horses. I worked all day Sunday. All day Monday I worked. On Monday I work the other side of the house, and when I started

(Testimony of Nick Bruno.)

the other side I saw this stack of hay down there. I did not go over there. I was about five or six hundred feet from there, seeds the barley, or whatever it was, and I saw this stack of hay and I says, "Well, they told me they were going to put in a pump," but they was digging a hole down here. They was putting in a pump, and now I see a stack of hay. There is something wrong here. I kept on putting on seeds until I reached close to the stack. When I reached the stack of hay I smelled something, and I says, "Something is wrong here," and I started to look close to the haystack, and there was a fence all around the haystack, a little fence right up close to the haystack, and I saw two or three holes there, and I looked and I saw some machinery, tanks, water and something in the tanks, a boiler—It had been something against the law. I says, "I never rent the ranch to do this kind of business. I rent the ranch to plant hay or alfalfa," and I says, "Now, you want to put me in trouble." I was mad. I don't know what to do. After I saw Frank Romero, and I leave the team close to the haystack, and he was coming around, and I says, "What is the idea to have this kind of business in my ranch?" He says, "Listen, you will get your rent. You better keep your mouth shut." He told me before, he makes me so scared I don't know what to do. "If you don't want to get into any trouble, keep your mouth shut. You will get your money." He says, "Go away and shut up, no tell nobody." The next morning I got up about 6 o'clock and went down about 7 o'clock, and I worked two or three hours, and I finished the seeds. I took the drill and the horses back to the owner. Then I went and buy

(Testimony of Nick Bruno.)

some goats close to Murietta Hot Springs, and the time I come back and reach Elsinore they arrested me in Elsinore. That was the time I had 15 or 20 little goats. I went and bought them and was going to take them down to the corral. I had them in my little Ford truck. They told me, "You had better come back to the ranch, the federal officers want you." This officer here, he bring me on the Sill place. Another fellow drive my machine, and the officer was drive his car and I was with the officer. We went on the same place. We put my car in the garage, and the goats, and he brought me back on my ranch. About a couple of weeks after the officers got the place I move those goats back there on the Bruno ranch, the goats that are there at the present time, and I have been keeping them there since. I do not remember telling Officer Barber that Verda worked for me. I never hear nothing. I heard them tell the old man I am going to help this man here. The old man said they were going to have him help me with the seeds, and I said, "That is all right." I never went to a place in Los Angeles called the Kelly Boiler Works. I don't know where it is at, this place. All during the month of December, 1929, I was in Cottonwood Canyon. At that time I had 800 goats, and during that entire month I was there in that canyon. I was in that canyon for six months. I had a fellow in there helping me named Bill Bryant. I am very certain that at no time did I go with anyone to a place called the Kelly Boiler Works. Them months I used to go up and down the hills. We chased all the goats in the canyon, because it was cold, rain, and we had a hard time to drive the goats down to the corral.

(Testimony of Nick Bruno.)

I was living in that little cook wagon. There was no house there, and when we find no house we sleep in the cook wagon. In the month of December I did not go to Los Angeles at all. I see that copper utensil that sets in the back of the courtroom there. The first time I saw it was here in the courtroom. It was not in my house at the time I rented it to these people. It was not brought there before I left that place to go to the Sill Ranch, and I never saw it until I saw it in this courtroom. I never saw it in the house.

CROSS EXAMINATION

BY MR. OHANNESIAN.

THE WITNESS: I bought this property, I guess, about three years ago. At that time it had the old house on there. The old house is there now. That is marked "E" on the map. It is on a little knoll, on a little high ground, with a lot of trees around it. When I bought the ranch the house was there. When I bought the ranch the galvanized shed was not there. I make that myself. It cost me \$145. Right back of my house there was an old water reservoir there. It is black on the inside. It is an old reservoir. There was no other improvement there at the time I bought it other than what I have stated. There was a little lumber shed there. The old man, and the man who used to sleep in there, an Indian fellow that I had the first year that I bought the goats, he used to sleep in the little house, and there was on the other side a big house. When I bought the ranch there was no house near the highway, the Elsinore-Perris road. That house was put up about a year and a half ago. A fellow named Herman lived there. I don't know

(Testimony of Nick Bruno.)

exactly his name. He is in the courtroom. He is that gentleman there, the bald headed fellow (indicating the defendant Herman Quirin). He built the house about a year and a half ago. That house was there complete in the month of July, 1929. I am referring to the house marked "B" on the Elsinore-Perris road. It is not a new house, built within the last four or five months, but there was about a couple of rooms built on there. He added new rooms to it when he came down there. Then after that he built another one, like a screen porch, on the same house; he connected with the same house. I guess that was last summer some time. I don't remember exactly. I know where that old mine pit is. I know that old mine a long time ago. I got the goats down there. I bought that ranch two years ago, but I have the goats down there before two years. I got the goat ranch about five or six years. I do not know when the mine pit was boarded in. When I know the mine there was nothing in the mine. The last time I saw the mine was when the jury come all down there, last Thursday. The last time I saw the mine before I went out there with the jury was before I come here in the court. I was there. I see that six years ago, five years ago, four years ago, three years ago, two years ago, I used to see that mine. I did not see who put the planks in there. I do not know when the planks were put in there. I never saw the work done in there. I do not know when the planks were put in there. I never saw that. I do not know where this man Romero lives. We come in Elsinore. He never gave me his address. I did not ask him for it. He told me he was going to live here on the ranch. I didn't get his address. The second time I saw

(Testimony of Nick Bruno.)

him was when he took the lease. He tried to give me a hundred dollars. Then I say, "No. You were going to give me my \$400." And he give me \$200, and when he give me the \$200 he say, "I pay you for six months." And then after he said, "On the 1st of February I give you another \$100 and on the 1st of May I give you another \$100 and on the 1st of May I give you another \$100." At that time he had moved on the ranch and was living on my ranch. Mr. Verda was not there at that time. When Mr. Verda moved in there I don't know whether Mr. Romero was living there or not. Mr. Romero told me he was living on my ranch. He says, "You are going to move your furniture out of here and I am going to bring mine in." I saw him on the ranch. He moved out a couple of days after he make the lease in August. Him and some other men come out there and moved in. The first time that he spoke to me about putting in alfalfa down there was the 20th of July, 1929. After I signed the paper I never went there to the ranch no more until I went down to take the drill, but I passed there on the highway. I was living on the Sill place, which is about five or six miles from my place. Mr. Romero did not come up to see me on the ranch. I did not go down to see him. He did not speak to me about drilling the place until the 18th of January in the morning. He come down to the other place and he says, "You are going to find the drill, and you go hunt the old man to seed the ranch." He came out to the Sill Ranch. He knew where I was living, I had told him when I moved the goats I was going to the Sill place. I told him that any time he wanted to see me to come over to the Sill

(Testimony of Nick Bruno.)

place. At that time a Mexican fellow was helping me tend to the goats. Sometimes I had time of my own to do other work, if I wanted to, and sometimes not. Sometimes when I got nothing to do I go work. When I no got anything to do I go work. When the time comes to help the goats I help the goats. After helping the goats—when the goats make the baby sometimes you need a couple of men to help, sometimes three men, and when we move away we have to build the corral, change the corral, and do all that work. I did not know that there was a pipeline from the mine down to the old reservoir. I found out there was a pipeline from the mine down to the old reservoir when all the jury came down there. That is the first time I knew of it. I don't know anything about a feed pipe from the gasoline store tank from the knoll down to the still. I never knew about that. I don't even know it right now. I never went down there. At the time I leased the property to Mr. Romero there was not a pipeline from the mine to the reservoir, and I knew nothing of it until this last Thursday when I went out there with the jury. Then all the jury was looking at the pipe, and that is the time I saw it. That is the first time I knew there was a pipe through my ranch. I was rather surprised, too. I used the drill in putting that grain in there. The drill was one you can ride on or you could walk. There was a seat there and you could ride on the seat. Sometimes I would ride and sometimes not, because it was heavy for a team. It took me a day and a half to drill the land between my house and the fence; that is, between my property and Quirin's Ranch; that is, between the reservoir and the

(Testimony of Nick Bruno.)

fence to the front gate. During the time I was drilling that sometimes I used to ride. When I used to feel tired I used to ride. I didn't find out there was a pipeline that went through that piece of ground. It took me Monday afternoon and until 11 o'clock Tuesday morning to drill the land between my house and where the still was located. I drilled all of that ground myself. That is, I planted it to grain. That is what I mean by drilling. The ground was not plowed up. I plowed that two years ago. I had hay again last year. It was not plowed at the time I drilled it. While I was drilling I never saw no pipeline. Commencing in front of the galvanized shed, down to the still, I didn't locate any pipeline. I didn't run into any with my drill. When I bought this last load of hay from Mr. Funk, altogether it was about 132 bales. One load I took in the barn, the galvanized barn, and the next load between the barn and the trees, between the house and the barn. That is about 150 or a couple of hundred feet from the place where the still is located now. It was between the house and the still. It was not inside the fence that is around the still. I never took no hay in there at all. I put one load in the barn and the other load between the house and the barn on the hill there with the trees all around. I put it between the barn and the house. I never see when they moved that hay. The first time I saw the hay again was when I saw it in the stack when I drilled, when I planted Monday in the afternoon. When I reached close to the haystack I saw it. There was no hay in the barn, just a few bales. On Monday in the afternoon was the first time I ever saw the haystack. I had not seen Romero just before I saw the haystack. I saw him on the 18th of January. I was sur-

(Testimony of Nick Bruno.)

prised when I saw the haystack down there, because they told me they are going to dig the hole there for the pump to pump water. I saw some men out there digging once. When I saw them the first day they had dug a hole about three or four feet, something like that. They had taken the trees out, too. There were some willow trees in there. And they told me, "I guess we get more water here, and we are going to dig here." When I saw it it was about seven or eight feet, something like that, square, and the trees had been moved away. Some trees were already down on one side of the hole. I never saw the hole any more. I saw it when I went to drill. I was never on the place from the time of the lease until I drilled. After I saw the haystack there on Monday I was surprised, because I saw the haystack there. I says, "What is this haystack doing over here? Maybe something is wrong." And I went more close. When I went more close I smelled something, and I said, "Huh! This looks funny to me here." Then I saw two or three holes, and I looked from the part of the hole and I saw some tanks and machines, like a factory, and I says, "That is what they do on my ranch." I says, "I never leased my ranch to do this kind of work." I knew Mr. Barber, the constable down there, or the chief of police, about a year ago. I did not go and tell him that I found a still on my ranch. I was afraid because that guy, he is awful tough. When I saw the pile of hay and these openings in the ground I never seen anything bubbling. When I looked down in the hole I saw the big wood tanks. I never went down the hole to see what they were. There was nobody there at the time except the old gentleman,

(Testimony of Nick Bruno.)

Joe Verda, was there within about ten or fifteen feet. Before anybody came there I did not go down and tell the constable or chief of police, Barber, that I had located what appeared to be a still on my ranch. I didn't tell him nothing about it Monday. Monday I was working down there. When I saw this haystack I looked at the hole and saw tanks and machinery there. In about an hour Frank Romero come down there. Before he came back I didn't inform anybody that I had located this still, because it was a short time after—a half an hour or an hour—I was awful afraid. I didn't know what to do. I didn't call up anybody. Before Romero came I didn't tell anybody I had looked into the still. I called the old man down there. I says, "Look what they got on my ranch." I didn't call up any officer and notify any officer. No officer was there. In driving my drill over that land where the iron pipe was I never hit no pipe at all with the drill.

REDIRECT EXAMINATION

BY MR. HERRON.

THE WITNESS: At the time that the court and the jury were examining a portion of those premises I went over there and tended to my goats. There wasn't any telephone on that ranch. I saw those pipelines out in the field when I went with the jury.

Exception No. 39.

(Whereupon, counsel for the defendants Peter Connley and Herman F. Quirin renewed his motion on behalf of each of said defendants for a directed verdict of not guilty as to each and every count of the indictment, upon the ground that the evidence was entirely insufficient to

(Testimony of Nick Bruno.)

warrant a verdict of guilty on any of the counts. The motion was overruled and exception taken as to both of said defendants.)

(Whereupon, counsel for the government presented his opening argument to the jury, and counsel for each defendant presented their arguments to the jury, and counsel for the government presented his closing argument on behalf of the plaintiff, during which the following proceedings took place:)

Exception No. 40.

MR. OHANNESIAN: Fred C. Amsbaw was the sixth man that was called and he testified that Nick Bruno rented his team, saying that he was going to do some excavating. Now, Bruno did not deny that. You will find that in volume 3, page 231, line 5; and also in Volume 3, page 238, lines 21 and 22.

MR. HERRON: Would you mind reading some of his other uses.

MR. OHANNESIAN: And the defendant was present when they said they were going to move dirt with the team on the place. When Bruno made this statement, the defendant Quirin was present. That is the testimony of Fred C. Amsbaw. You will find that in Volume 3, page 239, lines 16 to 22.

If Bruno was going to use this team solely for the purpose of drilling, because he was asked to do that by this so-called Romero, this unknown quantity, this unknown man, why would Herman Quirin pay for the team, if Herman Quirin was not in on this? If Bruno was telling the truth, that he merely took the team in order to drill, why did Herman Quirin pay for the team?

(Testimony of Nick Bruno.)

MR. HERRON: If the court please, I must interrupt. He is talking about the wrong team. That is the first team.

MR. OHANNESIAN: You are in the wrong team yourself.

MR. HERRON: No, I am not at all. We might as well take the evidence as it is.

THE COURT: There were two occasions of hiring the team.

MR. HERRON: Yes.

THE COURT: It is the first occasion you are talking about?

MR. OHANNESIAN: Yes, your Honor.

THE COURT: Before the hole was dug?

MR. HERRON: And not at the occasion of the seeding.

THE COURT: That was simply a mis-slip on Mr. Ohannesian's part.

MR. HERRON: But a very unfortunate slip from the defendant's standpoint.

MR. OHANNESIAN: I was courteous enough not to interrupt you while you were making your argument.

MR. HERRON: I am courteous, but I have to do my duty, and I propose to do it.

THE COURT: Proceed.

MR. HERRON: But when you misquote the evidence—

MR. OHANNESIAN: Now, your Honor, I don't want to be charged with misquoting the evidence.

MR. HERRON: I do not mean to say he did it wilfully, but he has misquoted the evidence.

(Testimony of Nick Bruno.)

MR. OHANNESIAN: In order to pacify my learned friend, if he will turn to Volume 3, page 210, lines 19 to 23, he will know what I am talking about.

Later on Bruno came to Mr. Fred C. Amsbaw, the government's sixth witness, the latter part of July, 1929, and said that he had been digging a hole on his ranch and wanted to level the dirt, and that Quirin came with him and drove the team. Now, is there anything wrong about that?

MR. HERRON: Certainly not. You are reading from the record now.

MR. OHANNESIAN: Now, gentlemen, I say to you in July and August Bruno said, or told the witness, rather, government's witness Amsbaw, in the latter part of July or August, he had been digging a hole. Sometimes he called it a pit and sometimes a hole, and he wanted the team with which to level the dirt. What has that to do with drilling?

MR. HERRON: If the court please, it has nothing to do with it. They were months apart and counsel knows it—six months apart.

THE COURT: It seems to me you are unduly sensitive about this.

MR. HERRON: I am, your Honor; I am mighty sensitive.

THE COURT: Too sensitive.

MR. HERRON: I do not think so, your Honor. I think when the district attorney has his attention called to a vital error that I am sensitive when I insist—

MR. OHANNESIAN: I am not in error and I appeal to the jury. I gave the book and pages—

(Testimony of Nick Bruno.)

MR. HERRON: We assign that as additional error.

THE COURT: Proceed.

MR. HERRON: Exception, and we ask the court to withdraw the statement.

THE COURT: You may proceed.

MR. HERRON: Exception.

Exception No. 41.

MR. OHANNESIAN: Do you mean to say Bruno was telling the truth? The first time he knew there was a pipe line from the reservoir back of his old homestead home was the day after he was arrested, or at the time he was arrested, or, in fact, I believe he stated he never knew—well, whatever the facts are, you will remember, gentlemen. I say to you he is not telling the truth. I believe you have a right to deduce from the circumstantial evidence that appears that Bruno knew all the time that the line was there for a year and a half; he knew at one time it was timbered, and when he saw that it was not timbered it certainly must have aroused his interest. We would all be more or less interested. I have a right to make that deduction. We would want to see what operations were going on. It was right across the road.

MR. HERRON: There is no evidence Bruno ever went near that mine from the time he left the place until he came back.

THE COURT: It seems to me that is a very reasonable argument to make, that a man who rented a property of that size with the understanding that it was to be considerably revised at this place where these trees were, would be interested enough to go back within four

(Testimony of Nick Bruno.)

or five months and see how it was coming along. That is a reasonable argument.

MR. HERRON: The evidence is he did not, and we assign the remarks as prejudicial error, in view of the statement—

THE COURT: Just a moment, Mr. Herron.

MR. HERRON: And I request the court permit me to state my objection and then I will stop. I request that the court instruct the jury to disregard the remarks of the court and the remarks of the district attorney.

THE COURT: What of the district attorney's remarks do you wish removed?

MR. HERRON: His remarks which had the effect, or in effect argued to this jury that Mr. Bruno was back near the mine at any time during the time when it had been shown it had been timbered or the pipe line laid, as prejudicial error, not being supported by any testimony in the record, assign it as error, and ask the jury be instructed to disregard it; and ask that the remarks of the court in support thereof be likewise stricken and the jury instructed to disregard them.

THE COURT: If the record shows that Mr. Ohanesian said any such a thing as that, the court did not hear it. So far as the court's comment is concerned, Mr. Graham, with his very manifest impetuosity, which has disturbed this court for several days, has interrupted the court before the court finished his comment.

MR. HERRON: Exception.

THE COURT: Now, by the way of finishing what I was saying when we were interrupted: This is a proper argument, based upon Mr. Bruno's testimony, to

(Testimony of Nick Bruno.)

suggest that a man who had rented this property, as Mr. Bruno says he had rented it, with the understanding that his rentor would make some material changes and improvements on it, would not be likely to leave it alone for four or five months, but to visit it, to see how those improvements were coming on. While Mr. Bruno's testimony is uncontradicted, the fact that it is uncontradicted does not necessarily mean that it is irrevocably acceptable. It may be questioned respecting its reasonableness or its unreasonableness, and that is what we understand the district attorney is doing. The court has no judgment as to these facts, but we think the comment as argument is proper.

MR. HERRON: Exception.

THE COURT: And the jury will not understand, of course, that the court is endorsing the argument.

MR. HERRON: Exception.

Exception No. 42.

MR. OHANNESIAN: The next witness, as you will recall, was L. L. Mathews, the ninth witness for the government. Mr. L. L. Mathews stated he saw on Bruno's ranch quite a pile of dirt. Those are his exact words. He saw a pile of dirt and he asked Herman Quirin what it was, and he stated that they were building a cheese factory down there. And when he was cross-questioned about that, or cross-examined by Mr. Herron, he was informed that as far as the witness observed it was a very serious statement and said in a serious way by the defendant Quirin.

Now, if it be a fact they were going to plant alfalfa and they were going to put in a water hole, they wouldn't

(Testimony of Nick Bruno.)

be putting it down there. This matter I will touch on later. They knew there were goats in the field there and they thought that was probably about as good an excuse as any—it was a silly excuse, a man having 800 goats is going to build a cheese factory, but you cannot expect a more sensible answer from anybody who is said to have violated the law.

MR. HERRON: There is no evidence that Quirin had a herd of goats.

THE COURT: Neither is Mr. Ohannesian saying that.

MR. HERRON: He is saying it inferentially, if I understand him correctly.

THE COURT: You are too sensitive.

MR. HERRON: I am exceedingly sensitive, your Honor.

THE COURT: I wish you would take something for it.

MR. HERRON: He is not fairly quoting the testimony.

THE COURT: Proceed. Proceed.

MR. HERRON: Exception.

THE COURT: It is strange the district attorney cannot make his argument without these extraordinary objections.

MR. GRAHAM: If he did not misstate the evidence, we would not make these objections, your Honor.

THE COURT: He is not making any misstatements.

MR. GRAHAM: Exception.

THE COURT: The evidence is Mr. Quirin said—

MR. GRAHAM: We are not questioning what he said, your Honor.

(Testimony of Nick Bruno.)

THE COURT: Do you mean to say the district attorney said Quirin had the goats?

MR. HERRON: He said it inferentially. He is talking about the cheese factory, trying to bring in Quirin inferentially, if I get his *modus operandi*.

Exception No. 43.

MR. OHANNESIAN: Thank you. Now, gentlemen, there is a very singular situation. Here is a man that has no business and was out on the street and was looking for work, and he was stopped by someone. He did not know this fellow Romero. They called him Romero, and he was offered work, and he is taken out to the Bruno Ranch and said he could have employment at \$30 a month, and all he had to do was to take care of the ranch, the mules, and help, according to Bruno's statement, of course, in drilling this field. There was an old man there, a man in the afternoon of his life, and it is too bad, a man nearly 60 years old, and he was foolish enough to permit himself to come in this holy temple of justice, raise his hand and add insult and injury to what is already done, and I say there is no ring of truth in his statements. And when Mr. Herron, the former district attorney of the United States, makes that statement, I am forced to say that is because he is employed by the defendants and he is obliged to defend them at any cost.

MR. HERRON: I assign that statement as prejudicial error. I am doing my duty here as honestly as I am able to do so, and as the United States Attorney is doing here.

THE COURT: I did not hear the statement. Will you read it, please, Mr. Reporter?

(Testimony of Nick Bruno.)

(Record read.)

MR. HERRON: I assign it as error, and I ask the Court to instruct the jury to disregard it. I assign that as the most deliberately unfair and indecent remark that I have ever heard made in a United States or any other court. I ask the court to admonish the jury to disregard it and to tell the district attorney to withdraw it and, failing that, I wish my exception.

MR. OHANNESIAN: I will withdraw the remark.

THE COURT: It would be better if the last remark were withdrawn.

MR. OHANNESIAN: I will withdraw that with apologies to Mr. Herron, providing he apologizes also in saying I have been misquoting the evidence.

MR. HERRON: I will not withdraw my statement in that regard.

MR. OHANNESIAN: Then I will withdraw my apology.

THE COURT: Proceed.

MR. HERRON: I assign that action of the United States Attorney as additional prejudicial error, and ask that the jury be instructed to disregard it.

THE COURT: What remark are you referring to?

MR. HERRON: Where he says he withdraws the apology and means what he originally said.

THE COURT: You want that withdrawn from the record?

MR. HERRON: I want the whole thing withdrawn as being deliberately unfair and indecent.

THE COURT: I think we can save time by disregarding this colloquy between these attorneys, and drop

(Testimony of Nick Bruno.)

the whole thing out of your mind. It is somewhat unfortunate. I think there has been unusual aggravation of Mr. Ohannesian and he naturally yielded to it, but I hope he will be permitted to continue with his argument and I hope he will not permit himself to be aggravated by these unnecessary and irritating interruptions in making some extravagant remarks hereafter.

MR. HERRON: We assign the remarks of the court as error, in that he says they are unnecessary and irritating objections.

MR. OHANNESIAN: At this time I wish to apologize to this Honorable Court for the apparent misconduct on my part. I am sorry I have allowed my temper to get the best of me.

THE COURT: Proceed.

MR. OHANNESIAN: I did not intend to do so and it was out of order. I hope you won't hold it against the defendants.

THE COURT: Proceed.

MR. OHANNESIAN: And let us forget that. If there is any particular feeling between Mark Herron and I I will be willing to take him out to dinner and the matter will all be forgotten.

MR. HERRON: As long as you don't ask to hold it against the defendants.

MR. OHANNESIAN: I don't ask you to hold it against the defendants, because they are not—

MR. HERRON: In other words, they are not to blame for their lawyer.

MR. OHANNESIAN: I think we can all agree on that.

(Testimony of Nick Bruno.)

THE COURT: Please be quiet.

MR. HERRON: Very well.

THE COURT: There is no occasion for you to say anything whatever. Proceed.

(Whereupon the court instructed the jury as follows:)

THE COURT: Gentlemen of the Jury, this case is planted not solely under the National Prohibition Act, but much more importantly under statutes of the United States which were passed long before it was conceived that this country would adopt the Prohibition Amendment, more than half a century ago, to protect the Internal Revenue. In one or two phases it invokes the National Prohibition Act. I say that because we were faced with just this sort of controversy over this same set of facts in 1915, before the resolution to amend the Constitution was introduced, as now, under statutes then existing, which still exist. The first count of the indictment is founded upon a statute, in fact, which was adopted as a part of the criminal law of the United States in 1789 and has existed unchanged since that time, the conspiracy statute.

The defendants pleaded not guilty, each one of them, when they were arraigned and thereupon each came under the provisions of our criminal practice, which one of the counsel has very eloquently and properly characterized as one of the honorable features of our Anglo-Saxon civilization. Counsel for the defense have offered to the court a requested charge, referring to that proposition which we are glad to give without any modification, except such connective discussion as may be necessary to classify them as they are offered as independent

propositions. So you are instructed that each of the defendants, at the time of the trial, is presumed to be innocent. He is not required to prove himself innocent nor is he required to put in any evidence at all upon that subject. In considering the testimony in this case, you must view it in the light of that presumption with which the law clothes a defendant. The law presumes the defendants innocent and that presumption abides with them throughout the trial of the case, until the evidence convinces you to the contrary beyond a reasonable doubt. You are instructed that in a criminal case such as this the burden of proof is upon the government and that burden remains upon the government throughout the case. It does not under any circumstances shift to the defendant so as to require him to prove his innocence. The burden of proof rests upon the prosecution to prove to the satisfaction of the jury beyond a reasonable doubt every material allegation in the indictment, and, unless this has been done, you should find the defendants not guilty.

Necessary *corrolaries* of these propositions are well stated in two further instructions which we give at the request of the defendants. You are instructed that where there is no evidence offered as to the previous good character of the accused, the presumption of such good character exists in his favor. A defendant in a criminal case is not obliged to become a witness in his own behalf and no inference of guilt can be drawn by the jury because a defendant has not testified at this trial. This presumption of innocence with which each one of these defendants is clothed is the principle by which you must test the convincing force of the testimony, because it is

your duty to attempt to reconcile the testimony with the theory of innocence, if that may be reasonably done. So long as any reasonable theory of innocence remains, you should indulge it and find the defendant to which that conclusion applies not guilty. By inflection the court has endeavored to emphasize the word "reasonable." It is a reasonable theory only of innocence that will protect. It is a reasonable doubt only that will protect. It is not true as has been argued to you, that you should acquit if there is any possible chance to find any defendant innocent; that you cannot convict unless no possible chance exists, in your judgment, to find him innocent. That is not the law. It is difficult to define the term "reasonable doubt" beyond its own wording.

This jury is to act as a deliberative body; each member is to contribute his best reasoning and his best judgment and his best recollection of the testimony, that is, to advise his fellow members of the jury his very best judgment upon the force of the testimony arrived at after he has put the various elements of testimony in their proper and logical relation to each other and has attempted to logically draw those deductions from that testimony which he thinks are proper. Each one is required to test his conclusions whether for or against any defendant, in the light of the observations and criticisms and suggestions of his fellows, and after you have earnestly and honestly endeavored to collaborate with each other in that way, if there remains in the mind of any one of you a doubt that is honestly the outcome of your careful deliberation and consideration of your fellows advice, that the defendant is guilty, that you may well say is a reasonable doubt, and you should abide by it, not to yield it

until you are convinced that it is no longer reasonable. But not every doubt is a reasonable doubt. A captious theory is not a reasonable doubt. A position taken after a lot of vague theorizing of what might have been possible, unsupported by any evidence, would not be a reasonable doubt. This jury is to act only upon the evidence.

Now, what is evidence? There is a great difference between testimony and evidence. Testimony is the vehicle by which evidence comes to a jury. Testimony may be sometimes evidence, but your fair, reasonable, logical inferences and deductions from accepted testimony become evidence also. Appearances may become evidence, if you are careful in allocating them to their proper place in the sequence of facts. Evidence is a much broader term than testimony. But you never can get evidence until you have testimony. So it is the evidence that you look to for your enlightenment to control your judgment, after you have given the testimony, as the conduit of the evidence, careful consideration. Now, evidence may be negative as well as positive. I say that in this case because of the very peculiar state of this record. It is quite unusual. The evidence upon which the government depends for a conviction of each one of these defendants is, in the main, undisputed. As we say that to you, we are not conscious of any place where it is disputed; we may have forgotten something. That is the reason we say in the main it is undisputed.

In behalf of two of the defendants, the effect of the government's testimony has been attempted to be explained. I think it is proper right here to allude to the functions of the court and jury at this juncture. The

criminal practice in the United States courts, is uniform throughout the country. It is the practice which was adopted when the Constitution of the United States went into effect and, in the particulars which the court now has in mind, it has not been changed since then. That practice makes the court the assistant to the jury in weighing the facts. I am not yet familiar enough with your California practice in criminal cases to know how far it departs from the federal practice in other states. I know I have sat in states where the departure was very great, but we are privileged in this practice throughout the United States—I mean federal judges—to make extensive comment upon the testimony in instructions. We are even empowered, if that function is discretely exercised, to advise the jury how the court weighs the facts and what the court's conclusions are as to any disputed question of fact. In 20 years experience on this bench I have not attempted to go that far in very many cases, if ever, and it is not the court's purpose to go that far here. I only speak of it because some of you may be more familiar with a different practice and think it is strange that we go as far as we may go in this instruction. But you are the sole judges after all of the facts in the case, and not the court. The court may discuss the facts only by way of assisting you to put the facts accepted by you in their proper legal relationship, only to make the law of the case clear to you, not to influence your judgment as to what the ultimate facts are.

We may speak of the facts by way of illustration of a point of law which we feel necessitated to make. We may speak of the facts by way of illustrating what powers of consideration and what range of considerations

should be entered into to weigh facts. Just as we have said, the government's testimony is, in the main, undisputed, but whatever we may do or have already done which may give to any one of you some sort of impression as to how this court considers the merits of this case, it is very necessary that you should not permit yourselves, as the sole judges of the facts, to be weighed by any such thought or influence of impression, but be jealous that you should be unaided by the court, except as the court advises you as to the law and incidentally discusses the facts and that your province is not invaded as the sole judges of the facts. You are the sole judges of the credibility of witnesses. Now, credibility is an incident of a trial which is affected by testimony and evidence, and when we discuss your privileges as the sole judges of the credibility of witnesses, we may say something about facts that bear upon that subject and can, except as the court aids you by whatever we may say on those subjects, to fully consider this case in all its bearings and you should not permit yourselves to be influenced by what you consider the court's opinion as to the credibility of any witness, but exercise your function unaided by any such impression, as the sole judges of that credibility.

What we have said about the undisputed character of the government's testimony applies to each one of these counts. The first count is a very important count in a practical way, because whomever you may convict upon the first count as a co-conspirator will be thereby very gravely affected as a necessary consequence respecting any one of the subsequent counts. I think later we will make that more plain. The first count is the conspiracy

count, charging each of these four defendants with having had an understanding to cooperate in the violation of the laws of the United States pertaining to the illegal manufacture, distillation and possession of intoxicating liquors. Only four are indicted here. So far as I can read it, the indictment is silent as to whether or not others may have been in it. You may perhaps assume from some things you have heard in this case, that others may have been interested in it; these men on the hill, the two, and their conduct; the man with the truck which disappeared. It may be speculative, but at least considered by you as possible members of this conspiracy. There is a piece of evidence in this case undisputed to the effect that in the Bruno house provisions at the table were made, in the arrangement of the table furniture, for seven people. But if you consider that the indictment does not include everybody who may have been in this deal, that would not be the slightest excuse for you to question the inclusion of any of the four men who are included in the indictment.

How is a conspiracy proved? Mr. Herron gave a very fine definition of conspiracy in his argument. It was worthy of what the assistant district attorney said about it. A conspiracy is an agreement between two or more people—and, please note, that you cannot convict anybody in this case of conspiracy unless you convict two of those named—at least two. A conspiracy is an understanding between two or more people commonly called an agreement—it seems to me “understanding” is much the better word—to commit an unlawful act, and, in the case of the United States, to commit, as our statute phrases it, an offense against the United States; and

that is what is charged here. The charge must, as it does here, specify the sort of an offense committed, and the charge would be insufficient if, further, the district attorney had not alleged one or more so-called overt acts. At common law it was an offense for two or more men to reach an understanding that they would do an unlawful thing without doing anything more than that, but in this country men who enter into such an unlawful agreement are given an opportunity to repent, and the conspiracy as it was known at common law does not become actionable until, after having formed the understanding, one of the parties does something to make it active, and that is called an overt act.

There are five overt acts set out in this indictment. The government must prove at least one of them before it can make a case, and prove it beyond a reasonable doubt. The court is privileged to say to you, and we do now, under the qualification we have already made, that the proof offered by the government, uncontradicted and unexplained, would justify you in finding each one of these defendants guilty as a co-conspirator. We say it would justify you; we do not say you should do that, because if we should say that we would be invading your province as the sole judges of the facts of the case. We can only say to you that, as a matter of law, these facts, if you deem them to exist, are sufficient in law to support a conviction, but it is for you to say whether you want to make those deductions yourselves and whether you are compelled by a judgment beyond a reasonable doubt to make them to the extent of convicting any one of these men. That man is a co-conspirator subject to conviction who consciously aids or assists in the unlaw-

ful enterprise, no matter when he joins it. If two or more men start an unlawful enterprise and are seen to be consciously cooperating in this enterprise, the fact that they are found doing that sort of thing under circumstances which indicate that they are actually and consciously cooperating with minds fixed upon the same result, that establishes the proof of the existence of the conspiracy as well as fixing each one of them as a co-conspirator. Having started the enterprise and while it is in process of execution, some third man comes in, it may be months after the thing has started, and consciously joins the group—and by consciously I mean joins it knowing what he is doing and joins it for the purpose of associating himself with the co-conspirators—he then becomes a co-conspirator and, by adoption, he is responsible for what has been done before he entered the combination. When once parties have entered upon the execution of their conspiracy, each individual becomes the agent of the other in any transaction that has for its object the benefit of the combination. A man may become a co-conspirator without having any interest whatever in the outcome. He may become a co-conspirator if his interest is the slightest, as a mere employee, as a co-conspirator under such circumstances, if he lends himself in any substantial way to the furtherance of the enterprise, no matter whether he has any financial interest or not; no matter whether he is the principal or the most inferior employee. The test is his conscious association with the unlawful enterprise, any act that he performs, however slight, if still having an effective office, connects him with that enterprise if he performs it consciously.

Of course, if you should conclude from your consideration of this case beyond a reasonable doubt that the two men on the hill had an interest in this situation, as associates, and that Verda, to warn them that this raid was in progress, waved his handkerchief at them to permit their escape, give them a chance to escape, that act of Verda's, if it were performed for that purpose, would be the act of a co-conspirator. We are using this only as an example. Pray do not understand that we are attaching to it any special importance by way of emphasizing it. We are trying to give you a clear understanding of what the law considers evidence of interest of a person under observation in a current, ongoing conspiracy, because at the time of the visit of the officers to this ranch, when this act of Verda's, whatever it was, was done, the conspiracy was still ongoing; it had not yet come to a termination. The officers had not yet put anybody under arrest nor had they uncovered the fact that a violation of the law was in progress.

Now, you should not be unmindful of Verda's explanation of that act of his. He admits he performed it. He tells you that he did it by way of salutation merely to these people on the hill. We can perhaps illustrate how a man may be connected with this conspiracy by considering the testimony respecting Verda's connection, with the testimony respecting Bruno's alleged connection, for illustrative purposes only. Before we do that, however, the jury will see very plainly, the validity of the explanations that the defendants offer in their own behalf, the strength or weakness of the government's case, cannot be properly appraised unless you consider this testimony, these various classifications, in the setting in which these

events transpired. You saw enough in the view that you had of the premises. The view you had was for the purpose of interpreting the testimony, but the testimony told you that this was an unlawful enterprise of unusual magnitude; that to establish it demanded a great deal of preparation; it demanded a very considerable tearing up of Bruno's property, several trees were uprooted and much excavation was necessary. To one who was familiar with the property then and after, as Bruno was before and after—before the enterprise was begun and after it was in going condition, as Bruno was, or to one who was there several days, as Verda was, there were some very significant and obvious conditions. There was an enormous quantity of fuel in this shed; there was quite a revision of the landscape where the willow trees had been; there was an active fermentation of 40 or 50 thousand gallons of mash, the fumes of which were escaping in the air through the ventilators which you observed; there was activity in this 40-horse-power boiler shown by the heat. Two senses at least of man were assailed by what happened there and what was going on, the sense of sight and the sense of smell.

I am satisfied this jury was astonished when it got there and saw what a bold act was undertaken and accomplished in the setting up of this distillery. So, when you consider the government's testimony against any of the defendants, upon which the government relies to charge that individual as a co-conspirator, you are privileged to interpret the force of that testimony in the light of this testimony, this atmosphere, these surroundings that we speak of, and also weigh the force of the explanation not only by consideration of the explanations

themselves, but by relating the explanations to the testimony of the government.

It is said that the explanations of Verda and Bruno are uncontradicted. It is true, and if you accept them or if they are sufficiently appealing to you to raise a reasonable doubt of the guilt of either one of them, you should acquit him—acquit that one. But the fact that they are uncontradicted does not mean that you are to accept them on that account alone. You are to test them in the light of the whole case and test them for reasonableness also, because, as the sole judges of the credibility of witnesses, you are affected by the reasonableness of the story the witness tells.

Verda says that four days before the raid he was approached by a stranger, Ramirez, and hired by him to go to this place and take care of his, Ramirez's mules, and do whatever was necessary to be done. As to that the testimony is somewhat obscure. The mules were part of the equipment of this unlawful transaction and Verda admits that he was employed to take care of that much of the property of one, who, if he existed, as Ramirez or whatnot, was clearly one of those responsible for this violation of the law. You know where the mules were, and you know where they were taken care of and you know how close they were and Verda's duties regarding them, to the place where this very great violation of the law was taking place. He was hired by Ramirez and the wages fixed. It is in testimony here, however, that he also said that Bruno was his boss. He tells you that in the four days that he was there he saw no one in and about the house, even at night. Yet there is evidence here, undisputed, that in the dining room the table was set for seven people.

Being conscious now of the magnitude of this enterprise and the help that logically was necessary to carry it on, and the fact, because of the warmth of the boiler, that there had been some activity there in the four days, in all probability, it is for you to consider how reasonable Verda's explanation for statement is that he saw no one or was conscious of no one around the premises except on one night he heard someone outside. As we have said, you are to consider the reasonableness of this explanation in the light of what you not only know, having observed the premises, was the situation there, but as to how you were advised by the undisputed testimony for the government.

In the same way the testimony in his own behalf of Bruno, if what he says about it is true, or if you have sufficient confidence in it to cause you to entertain a reasonable doubt of his guilty, then, of course, you ought to acquit him, but you should look to the whole case and consider the testimony which has been offered regarding his activities and the reasonableness of his story in the light of what you have seen and how you would assume he would act, before you can reach a conclusion which the law would be satisfied with.

Now, you must be careful, however, in judging either one of these two defendants, without giving some consideration to his personality. The question is not how you would act under circumstances which are seen to have surrounded either Bruno or Verda; the question is not what an ordinarily reasonable man would do, but you have seen Bruno and Verda on the witness stand; you have heard something about them. The question is what appraisal do you make of their acuteness of observation

and reasoning; how do you size them up; what do you think they would have noted or how should they have reacted to those circumstances. Undoubtedly there was a lease between Bruno and the man passing for this record as Ramirez. You have the terms of the lease in the testimony. You have got Bruno's explanation of it. Bruno says that after he made this lease, he left the premises alone from August until after the middle of January. The lease was for one year. He was advised that his tenant was to attempt to raise alfalfa and was to precede that attempt by some quite radical excavations and modifications of the premises in an effort to hunt water, not having water enough to irrigate the premises for alfalfa, the land not then being capable of that sort of culture, without irrigation. It is for you to say whether that is a reasonable explanation on the face of it; whether it is reasonable that after Bruno was advised of what was to happen to his property he would not be curious enough to see what actually was going on by way of preliminary improvements to his property; whether it was reasonable that anybody would rent that property under these circumstances, with the uncertainty ahead as to water that it might be adapted for that sort of culture, and rent it only for a year; whether it is reasonable that anybody would take that property over with the purpose of committing so flagrant an offense against the United States as actually occurred there before the middle of January, and then invite the landlord to come back and in the proximity of this distillery drill this ground to seed, to barley, and then, of course, you will test the reasonableness of Bruno's explanation in the light of the testimony of these neighbors of his, which tend to very greatly qualify his explanation,

in our judgment at least. Just as you test the explanation of Verda as to his conduct in waving the handkerchief to these men on the hill as a salutation, giving them "good-bye"—it is not shown he had any interest in these people or that they were friends of his or had any occasion for giving these distant people such a friendly salutation.

Now, gentlemen, if there is anything in this testimony that you think the court should have alluded to by way of qualification of exemplification or enlargement, either way, in his comment upon this testimony affecting these men, it is your duty to apply those matters yourself. We are making this comment solely by way of illustration.

It would seem to have been insisted here, because Verda and Bruno's explanations were undenied, that you must accept them but, as the sole judges of the credibility of witnesses, you are bound to scrutinize explanations made by interested parties before you accept them, and measure them according to their inconsistencies, if any, or their conflicts with other testimony which you may accept.

Now, there is no explanation of any of the other testimony. You are justified in assuming that the pipeline from the Quirin mine to the well or to the still was an essential factor of this unlawful operation. You have seen how obvious that was in its close association to the Quirin residence, and, in the absence of anything to qualify the force and effect of that testimony, you are justified, if you conclude to do so, in assuming that Quirin permitted his premises to be used in this enterprise, at least to that extent and if he did that consciously, knowing that he was making thereby a contribution to this unlawful act, he associated himself with it as fully as if he were there all the time actively at work underground, and this is inde-

dependent of the other testimony which has been argued to you, coming from the government, of his association with the man Connley—otherwise Walker—and Bruno at various times.

We think we need not dwell upon the testimony which affects and connects the defendant Walker with these transactions. It is not proper to pick out instances or items and treat them as isolated matters, and ask you to consider whether that particular thing is an indication of guilt. It is the combination of circumstances, the association of events, which you are to look to. Any one of these taken alone may be considered as a merely innocent gesture, but if in combination it is seen to be an effective part of circumstances to a certain unlawful end, that is an entirely different matter. Now, it follows—sufficiently in this case, at least, because of the uncontradicted nature of the government's testimony—that whomever you convict, if two or more, under this conspiracy charge, may be convicted under each one of the other charges. If there was a continuing conspiracy there from the beginning until the raid, it is reasonable for you to assume that what were there in the shape of mash, manufactured products and so forth, were the fruits of that conspiracy, for which each one of the co-conspirators was responsible. The possession of one would be the possession of every other one.

It is altogether probable that Verda, for instance, is a very minor factor in this case. It may be that Bruno's connection was not very active, but those are not matters which go to the question of guilt at all, that is, they only temper the case against them, not weaken it. Those are matters which the court will take care of. A wide range of punishment is afforded by the statutes violated clearly

in this case. The court is given very wide discretion by way of fine or imprisonment, which, of course, we exercise according to the significance of the individual as one of the factors of the conspiracy. Never should any consideration of that kind enter into the jury's deliberations, because then you would be doing what you have no right to do. You would be invading the province of the court.

Anything for the government?

Exception No. 44.

MR. OHANNESIAN: The government is satisfied, your Honor.

THE COURT: Defense?

MR. GRAHAM: If the court please, to the failure of the court to give instruction number one, requested by the defendants, which is to the effect that to warrant a conviction for conspiracy to violate a criminal statute the evidence must disclose something further than participating in the offense which is the object of the conspiracy—

THE COURT: You may take your exception for failure to give number one.

(The court at the request of the defendant Verda further instructed the jury as follows:)

THE COURT: You must not consider for any purpose any evidence offered and rejected, or which has been stricken out by the court. Such evidence is to be treated as though you had never heard it. You are to decide this case solely upon the evidence that has been introduced before you and the inferences which you may deduce therefrom, and such presumption as the law may deduce therefrom as stated in these instructions, and upon the law as given you in these instructions.

(The court at the request of the defendants further instructed the jury as follows:)

THE COURT: The testimony of one witness entitled to full credit is sufficient for the proof of any fact, and would justify a verdict in accordance with such testimony, even though a number of witnesses on the other side might testify to an opposite state of facts, if, from the whole case, the jury believes that the greater weight of the evidence, considering its reliability and the credibility of the witness, is on the side of the one witness as against the greater number of witnesses.

(The court then further instructed the jury as follows:)

THE COURT: Before you may convict any one defendant of the crime of conspiracy as charged in the indictment, you must believe from the evidence beyond a reasonable doubt:

First, that a conspiracy existed as charged in the indictment.

I will stop right here to say you cannot evade the conclusion that a conspiracy existed as charged in the indictment. The question is as to the co-conspirators.

Second. That such defendant was a party thereto.

Third. That one or more overt acts charged in the indictment were committed within the jurisdiction of this court, and you are further instructed that the fact that such defendant was a party to the conspiracy must be proved by evidence of what that particular defendant himself did or said or by evidence of what was done or said by other conspirators in his presence and cannot be proved by evidence of what others did or said out of his presence.

That mere knowledge—I am giving number five now—of the commission or intended commission of a crime is not sufficient to render a person guilty thereof unless the

person having such knowledge knowingly participated therein.

(The court further instructed the jury as follows:)

THE COURT: When we say it must be shown that the party charged as a co-conspirator, "consciously aided," means that he knew what he was doing and was willing to do it, and knew what it was to accomplish.

(In answer the request of defendants that their instruction No. 9, which is set out at length in Exception No., the court further said:)

THE COURT: No, I cannot give that because that is not the law. That is not the law. We have that very question many times in these conspiracy cases. Conspiracy may be proven by acts or declarations of co-conspirators in connection with other facts which, put together, show that there is a concert of action.

(The court further instructed the jury as follows:)

THE COURT: That act of Verda (in waving his handkerchief), if the jury considers it to be an incriminating act, applies only to his case.

Exception No. 45.

MR. GRAHAM: I have one or two exceptions to the instructions of the court, to the effect that the proof offered in this case by the government, if uncontradicted and unexplained, would justify the jury in convicting the defendants—

THE COURT: The court stated that with the qualification which the jury will recall, undoubtedly.

MR. GRAHAM: I do not recall the exact language the court gave in that instruction, but I think with my mentioning of it it has been identified sufficiently to take exception to that instruction.

THE COURT: Very well.

Exception No. 46.

THE COURT: The court feels like apologizing for an occasional show of temper, too. Mr. Belt, have you something to say?

MR. BELT: Yes, I have an exception I would like to have noted, your Honor, in the interest of the defendant Quirin, to the statement that the jury would be warranted in believing that Quirin permitted water knowingly to be taken from his reservoir for use in the still.

THE COURT: The court means by that—and if I didn't make it plain, I will do so now—that in view of all the circumstances the construction there at the mine, especially in proximity to Quirin's residence, the character of the pipe and the direction which it took, the ownership of the property by Quirin and the incidents that would normally accompany the pumping of water in that shaft to go through that pipe, these things unexplained would warrant the jury in concluding that Quirin consented consciously, knowingly and willingly to the use of his premises to that extent to aid this unlawful enterprise. When we say that we do not mean that should be your conclusion, because that is your business, not the court's. I am only telling you if you base upon those incidents a conclusion that Quirin was a party to the conspiracy, it would stand in law. That is all.

(The court further instructed the jury as follows:)

THE COURT: Now, gentlemen of the jury, again we remind you that you are the sole judges of the facts of the case and that you are to exercise this function unaided by any impressions you may have respecting the court's opinion as to the guilt or innocence

of any of these defendants. You must not permit yourselves to be aided in your cogitations on this case by what you think the court thinks about it. You are the sole judges of the credibility of these witnesses, and we remind you of what was said in the beginning about the office of reasonable doubt. In a conspiracy case, as in other criminal cases, the several accused here are presumed to be innocent until the contrary is shown by proof. Whether that proof is in whole or in part circumstantial, the circumstances relied upon by the prosecution must so indicate the guilt of the accused as to leave no reasonable explanation of them which is consistent with the accused's innocence. It is just what the court said before, but we are giving it in this form at the request of the defendants. The hypothesis of guilt should flow naturally from facts proven, and be consistent with them all. If the evidence can be reconciled either with the theory of innocence or with guilt—I do not think you mean that, gentlemen.

MR. GRAHAM: What is the number of that, your Honor?

THE COURT: Oh, I beg your pardon. If the evidence can be reconciled either with the theory of innocence or with guilt, the law requires that the defendant be given the benefit of the doubt, and that the theory of innocence be adopted.

Now, Gentlemen, we have caused to be prepared for you a blank verdict with places where your conclusions may be entered as to each count, and as to each one of the four defendants. At this hour we will not read this verdict. I do not think you will need to have the court explain it to you, because we are certain you will

understand how to complete it. In the blank places—and there are 20 of them—5 as to each defendant, you will enter the word “guilty” or the words “not guilty” in the appropriate places, according as you conclude as to the guilt or innocence of the defendant then under consideration, after you have considered all the evidence.

You are now to retire in charge of an officer and when you have agreed upon a verdict you may separate and cause your foreman to seal it and carry it on his person and bring it into court tomorrow morning at 10 o’clock. There are six counts as to each defendant and not five, as the court said.

Exception No. 47.

MR. HERRON: May we, your Honor, respectfully suggest, in following the practice here, Judge James informed us in a case tried not so long ago that unless the instruction was read in the presence of the jury that our exception would not be preserved, in this particular circuit. If I, therefore, may read it just briefly and we may have our exception, it being understood we are reading it in—

THE COURT: It is 20 minutes after four. Certainly the record can be preserved by reading it after the jury has taken the case over.

MR. HERRON: If it may be deemed to be read, after the jury has been excused, all right. You stipulate, then, that it may be deemed to have been read in in the presence of the jury?

MR. OHANNESIAN: Yes.

(Thereupon, the jury retired.)

Exception No. 48.

MR. GRAHAM: If the court please, there are three instructions I want to read into the record.

THE COURT: Oh yes, yes.

MR. GRAHAM: It may be admitted they were offered?

THE COURT: Yes. Here they are.

MR. GRAHAM: They were presented last Thursday. To the failure of the court to give instruction No. 9, as requested by the defendants, we except. This instruction is as follows:

Without independent proof of the existence of the conspiracy and of the participation of a particular defendant therein, the act of declaration of an alleged co-conspirator relating to the conspiracy may not be proved for the purpose of proving the conspiracy or proving that any one of the defendants was a party thereto.

Exception No. 49.

To the failure of the court to give instruction No. 11 as requested by the defendants, the defendants except. This instruction is as follows:

While a declaration of a conspirator made during the pendency of a conspiracy is admissible against all parties shown by the evidence to have been members of the conspiracy, yet, before the declarations of a conspirator can be considered as evidence against any defendant, unless it is made in the presence of such defendant, there must be sufficient competent evidence independent of such declaration to prove that such defendant was a party to the conspiracy.

Exception No. 50.

To the failure of the court to give instruction No. 14, as requested by the defendants, we except. This instruction is as follows:

In order to establish the existence of a conspiracy, there must be proof other than the statements or declarations of an alleged conspirator; hence the extra judicial declarations or statements of any defendant in this case standing alone and of themselves, if any such were made, are not sufficient to show the existence of a conspiracy.

Now, Mr. Ohannesian has stated before it may be stipulated these requested instructions, which were refused, may be deemed to have been read and excepted to in the presence of the jury.

MR. OHANNESIAN: That is quite true.

(The jury returned to the courtroom at 5:30 p. m. Whereupon, the following proceedings were had:)

THE COURT: Are the defendants all here?

MR. GRAHAM: They are outside, your Honor.

THE COURT: Bring them in. Gentlemen, the court understands you have something to present.

A JUROR: Your Honor, we would like to have a repetition of your instructions as to conspiracy, whether or not two or more of the defendants had to be guilty of conspiracy, or would one be guilty of conspiracy with an outside party.

THE COURT: No, as this indictment is found there can be no conviction of conspiracy unless you find two of the four named as co-conspirators.

THE JUROR: That is all.

MR. OHANNESIAN: Your Honor,—

THE COURT: Is that your understanding, gentlemen?

MR. OHANNESIAN: Your Honor, the indictment reads—pardon my interrupting—“With the defendants and parties unknown.”

THE COURT: Where is that? I did not notice that in the indictment.

MR. OHANNESIAN: Yes. I want to call your attention to that.

THE COURT: If that is the case, we are wrong about it. You are right about that, Mr. Ohannesian.

MR. HERRON: You are right.

THE COURT: “Conspired with each other and with divers other persons whose names are to the Grand Jurors unknown.” Yes. If you find beyond a reasonable doubt from this evidence—and you must find it from the evidence—that parties unknown were associates with one or more of the four who are named here as co-conspirators in the conspiracy as depicted in this indictment, then it will be possible for you to find a verdict of conspiracy against but one of the defendants indicted. Is that your constructions?

MR. OHANNESIAN: Yes. I think the court said that fact was to be beyond a reasonable doubt.

THE COURT: Yes, I said so. The fact must be found, the fact there were others unknown with whom the one that you conclude to have been the party conspired and cooperated in the conspiracy as depicted in this indictment, and if you so find, then the return may be to that effect.

It is hereby stipulated that the foregoing Bill of Exceptions contains all of the evidence, oral or documentary.

adduced at the said trial and all of the proceedings had therein.

The defendants hereby present the foregoing as their proposed Bill of Exceptions herein, and respectfully ask that the same may be allowed.

C. L. Belt

Mark L. Herron

Russell Graham

Attorneys for the Defendants.

By Russell Graham

Of Counsel.

To Samuel W. McNabb, Esq.,
United States District Attorney.

Sir:

You will please take notice that the foregoing constitutes, and is, the Bill of Exceptions of the defendants in the above entitled action, and the defendants will ask the allowance of the same.

C. L. Belt

Mark L. Herron

Russell Graham

Attorneys for the Defendants.

By Russell Graham

Of Counsel.

STIPULATION RE BILL OF EXCEPTIONS.

It is hereby stipulated that the foregoing BILL OF EXCEPTIONS is correct as amended, and contains all the evidence adduced at the trial, and that the stipula-

tions therein mentioned are correct, and that the same may be settled and allowed by the court.

C. L. Belt

Mark L. Herron

Russell Graham

Attorneys for the Defendants.

By Russell Graham

Of Counsel.

Samuel W. McNabb

SAMUEL W. McNABB

United States Attorney.

By.....

ORDER APPROVING BILL OF EXCEPTIONS.

This Bill of Exceptions having been duly presented to the Court and having been amended to correspond with the facts, is now signed and made a part of the records in this cause.

DATED this 24th day of April, 1930.

John M Killits

Judge.

[Endorsed]: Original In the District Court of the United States for the Southern District of California Central Division. Hon. John M. Killits, Judge Presiding. United States of America, Plaintiff, vs. Nick Bruno, Joe Verda, Peter Connley, alias George Walker, and Herman Quirin, Defendants. No. 9926-M. Criminal. Received copy of within Bill of Exceptions this 11 day of April 1930 S. W. McNabb, U. S. Atty. Bill of Exceptions on behalf of Peter Connley and Herman F. Quirin. Lodged Apr 11, 1930 R. S. Zimmerman, Clerk By Edmund

L. Smith, Deputy Clerk Filed Apr. 24, 1930 R. S. Zimmerman, Clerk By B. B. Hansen Deputy Clerk. Reported by: Ross Reynolds C. W. McClain Ray E. Woodhouse. Reynolds & McClain shorthand reporters and notaries Official Reporters U. S. District Court Suite 208-9-10 Wilson Building First and Spring Streets Los Angeles, Calif. Mutual 2708.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,)	No. 9926-M
Plaintiff,)	Crim.
VS)	
PETER CONNLEY and)	PETITION
HERMAN F. QUIRIN,)	FOR APPEAL
Defendants.)	

TO THE HONORABLE THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, AND SAMUEL W. McNABB, ESQ., UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA, AND TO THE HONORABLE THE CLERK OF THE ABOVE ENTITLED COURT:

You and each of you will please take notice that the defendants, Peter Connley and Herman F. Quirin, desire to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgments and sentences, heretofore, to-wit, on the 2nd day of April, 1930, made and entered against said defendants in the above en-

titled cause, and from each and every part thereof, and present herewith their assignment of errors and pray that such appeal be allowed.

Dated April 2, 1930.

C. L. Belt.
Mark L. Herron
Russell Graham
Attorneys for Defendants.

[Endorsed]: Original. Original No. 9926M Crim. In the United States District Court Southern District of California Central Division. United States of America Plaintiff vs Peter Connley and Herman F. Quirin, Defendant Petition for Appeal Received copy of within Petition this 2st day of April 1930 Samuel W. McNabb, J.G.O. Attorney for Plaintiff Filed Apr. 4, 1930 R. S. Zimmerman, Clerk, By W. E. Gridley, Deputy Clerk. Mark L. Herron Russell Graham 311 American Bank Building Second & Spring Streets Los Angeles Attorneys for Defendants

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	No. 9926-M
	)	Crim.
vs.)	
PETER CONNLEY and	)	ORDER AL-
HERMAN F. QUIRIN,	)	LOWING AP-
Defendants.	)	PEAL AND
	)	FIXING BOND

Upon motions of Messrs. C. L. Belt, Mark L. Herron and Russell Graham, attorneys for the defendants Peter Connley and Herman F. Quirin, and upon filing the no-

tice of appeal from the judgments and sentences rendered against said defendants, together with an assignment of errors;

IT IS HEREBY ORDERED that an appeal be and hereby is allowed, to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgments and sentences heretofore entered herein against said defendants;

That pending the decision upon said appeal the defendant Peter Connley be and he is hereby admitted to bail upon said appeal in the sum of \$12,000.00; and that the said defendant Herman F. Quirin be and he is hereby admitted to bail upon said appeal in the sum of \$6,000.00; and that the bonds be conditioned that if the judgment be affirmed or the appeal dismissed the several fines and the costs of the prosecution will be paid.

That a cost bond be given by said defendants in the sum of \$250.00 each.

Dated April 2, 1930.

Approved as to form:

S. W. McNabb

United States Attorney

John M. Killits

Judge.

[Endorsed]: Original Original. No. 9926M Crim. In the United States District Court, Southern District of California, Central Division. United States of America, plaintiff, vs. Peter Connolley and Herman F. Quirin, defendants. Order allowing appeal and fixing bond. Received copy of within order this 2st day of April, 1930 Samuel W. McNabb, by J G O. Attorney for plaintiff. Filed Apr. 4, 1930. R. S. Zimmerman,

Clerk, by W. E. Gridley Deputy Clerk. Mark L. Herron Russell Graham, 311 American Bank Building, Second and Spring Streets, Los Angeles, Attorneys for defendants.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	No. 9926M
Plaintiff,	)	Crim
vs.	)	ASSIGNMENT
PETER CONNLEY and	)	OF ERRORS
HERMAN F. QUIRIN,)	
Defendants)	

Come now Peter Connley and Herman F. Quirin, the defendants above named, and file the following statement and assignment of errors, upon which they and each of them will rely upon the prosecution of their appeal in the above-entitled cause:

I.

That the Court erred in its rulings in admitting testimony over the objections of the defendants, to which rulings exceptions were duly taken.

II.

That the Court erred in excusing the jury and in questioning the witness Richard Kelley, and by striking the bench with his fist and by conducting himself in such a manner, during such questioning, as to terrorize and intimidate the said witness Kelley, in the absence of the jury, and to frighten the said witness Kelley into

testifying in part as it is apparent from the record the Court desired him to testify.

III.

That the Court erred in refusing to allow counsel for the defendants, or any of them, to interrogate the witness Kelley out of the presence of the jury, after the Court had questioned such witness out of the presence of the jury.

IV.

That the Court erred in then questioning the witness Kelley in the presence of the jury after the Court had, out of the presence of the jury, intimidated the said witness Kelley as aforesaid.

V.

That the Court erred in intimidating the witness Charles Cruse by ordering the arrest of the witness Kelley at the conclusion of the testimony of the witness Kelley, because the Court was not satisfied with the testimony of the said witness Kelley.

VI.

That the Court erred in excusing the jury and in questioning the witness Amsbaw in such manner as to intimidate the witness Amsbaw.

VII.

That the Court erred in refusing to allow counsel for the defendants, or any of them, to interrogate the witness Amsbaw out of the presence of the jury, after the Court had questioned such witness out of the presence of the jury.

VIII.

That the Court erred in then questioning the witness Amsbaw in the presence of the jury after the Court

had, out of the presence of the jury, intimidated the said witness Amsbaw as aforesaid.

IX.

That the Court erred in denying the motion of each of said defendants for a directed verdict of not guilty, made at the conclusion of the Government's case and renewed at the close of the entire case, which said motions were made upon the ground of the insufficiency of the evidence as to each defendant and as to each and every count of the indictment.

X.

That the Court erred in refusing to give the jury instructions numbers 1, 9, 11 and 14, which instructions were requested by all defendants, and to which refusal the said defendants excepted.

XI.

That the Court erred in instructing the jury as a matter of law that there was sufficient evidence in the record to justify the conviction of each and every defendant charged in the indictment as to each count.

XII.

That the Court erred in permitting counsel for the Government to misquote the evidence, and in refusing the defendants' request to instruct the prosecuting attorney not to misquote the evidence, and in refusing to instruct the United States Attorney to correct his misstatements, which said misstatements were specifically pointed out to the Court and excepted to.

XIII.

That the Court also erred in his language and manner in criticizing counsel for the defendants for calling such errors to the attention of the Court.

XIV.

That the Court erred in not compelling the prosecuting attorney to withdraw his statement to the jury to the effect that the only reason counsel were objecting to such errors in stating the evidence was that counsel, having been hired in the case, were willing to attempt to win the case at any cost.

XV.

Upon the foregoing assignment of errors and upon the record in said cause the said defendants pray that the verdict and judgment rendered therein may be reversed.

Dated April 2, 1930.

C. L. Belt.

Mark L. Herron

Russell Graham

Attorneys for Defendants
Connley and Quirin

[Endorsed]: Original, Original No. 9926M Crim. In the United States District Court Southern District of California Central Division United States of America Plaintiff vs Peter Connley and Herman F. Quirin Defendant Assignment of Errors Received Copy of within Assignment of Errors this 2st day of April 1930 Samuel W. McNabb, by J. G. O. Attorney for plaintiff. Filed Apr. 4, 1930. R. S. Zimmerman, Clerk by W. E. Gridley Deputy Clerk. Mark L. Herron Russell Graham 311 American Bank Building Second & Spring Streets Los Angeles Attorneys for Defendants

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	No. 9926-M
	Plaintiff,)
VS	)	AMENDED
	)	ASSIGNMENT
PETER CONNLEY and	)	OF
HERMAN F. QUIRIN,	)	ERRORS
Defendants.)	

Comes now Peter Connley and Herman F. Quirin, the defendants above named, and file the following statement and amended assignment of errors, upon which they and each of them will rely in the prosecution of their appeal in the above entitled cause.

I.

That the Court erred in excusing the jury and in questioning the witness, Richard Kelley, and by striking the bench with his fist and by conducting himself in such a manner, during such questioning, as to terrorize and intimidate the said witness Kelley, in the absence of the jury, and to frighten the said witness Kelley into testifying in part as it is apparent from the record the Court desired him to testify.

II.

That the Court erred in refusing to allow counsel for the defendants, or any of them, to interrogate the witness Kelley out of the presence of the jury, after the Court had questioned such witness out of the presence of the jury.

III.

That the Court erred in then questioning the witness Kelley in the presence of the jury after the Court had, out of the presence of the jury, intimidated the said witness Kelley as aforesaid.

IV.

That the Court erred in intimidating the witness Charles Cruse by ordering the arrest of the witness Kelley at the conclusion of the testimony of the witness Kelley, because the Court was not satisfied with the testimony of the said witness Kelley.

V.

That the Court erred in excusing the jury and in questioning the witness Amsbaw in such manner as to intimidate the witness Amsbaw.

VI.

That the Court erred in then questioning the witness Amsbaw in the presence of the jury after the Court had, out of the presence of the jury, intimidated the said witness Amsbaw as aforesaid.

VII.

That the Court erred in denying the motion of each of said defendants for a directed verdict of not guilty, made at the conclusion of the Government's case and renewed at the close of the entire case, which said motions were made upon the ground of the insufficiency of the evidence as to each defendant and as to each and every count of the indictment.

VIII.

That the Court erred in refusing to give the jury instructions numbers 1, 9, 11 and 14, which instructions were requested by all defendants, and to which refusal the said defendants excepted.

IX.

That the Court erred in instructing the jury as a matter of law that there was sufficient evidence in the record to justify the conviction of each and every defendant charged in the indictment as to each count.

X.

That the Court erred in permitting counsel for the Government to misquote the evidence, and in refusing the defendants' request to instruct the prosecuting attorney not to misquote the evidence, and in refusing to instruct the United States Attorney to correct his misstatements, which said mis-statements were specifically pointed out to the Court and excepted to.

XI.

That the Court erred in his language and manner in criticizing counsel for the defendants for calling such errors to the attention of the Court.

XII.

That the Court erred in accusing counsel for the defense of questioning the Court's veracity with reference to the written statement of the witness Amsbaw which was admitted in evidence as special Exhibit admitted by direction of the Court.

XIII.

That the Court erred in refusing to instruct the jury to disregard the statement that counsel for defendants had questioned the Court's veracity.

XIV.

That the Court erred in denying the defendants' motion to strike out and to instruct the jury to disregard the Court's statement purporting to disclose the contents of the said written statement of the said witness Amsbaw.

XV.

That the Court erred in permitting the United States Attorney to state in the presence of the witness, Cruse, an employee of the witness, Kelley, that the said Kelley had said "Well, they didn't get anything out of me. I could not read or write and they wanted to give me some glasses to read with and I had my glasses in my pocket all the time."

XVI.

That the Court erred in not permitting counsel for defendants to cross examine the witness Kelley with reference to an impediment in the speech of the person referred to in the testimony of said Kelley as P. Walker.

XVII.

That the Court erred in advising counsel making objections on behalf of the defendants that he was "too sensitive" about mis-statements of the United States Attorney in his closing argument when said counsel called the attention of the United States Attorney to mis-statements of the evidence with reference to the testimony concerning the teams which had been rented by the defendant Bruno, and further erred in suggesting that said counsel "take something" for said sensitiveness.

XVIII.

That the Court erred in permitting the United States Attorney in his closing argument to make the statement that the defendant, Quirin paid for the team with which the seeding about the still was done.

XIX.

That the Court erred in refusing to instruct the United States Attorney not to misquote the evidence with reference thereto.

XX.

That the Court erred in permitting the United States Attorney to repeat said mis-statement after his attention had been previously directed to it, and in criticizing counsel for the defendants for so directing his attention.

XXI.

That the United States Attorney was guilty of misconduct in stating inferentially in his opposing argument that Herman Quirin had a herd of 800 goats and that said goats were to be used in connection with a cheese factory. That the Court was guilty of misconduct in criticizing counsel for the defendants for calling the attention of the Court to the said mis-statement and in stating "he (the United States Attorney) is not making any mis-statement."

XXII.

That the United States Attorney was guilty of misconduct in stating in his closing argument "and when Mr. Herron, the former District Attorney of the United States, makes that statement, I am forced to say that is because he is employed by the defendants and he is obliged to defend them at any cost."

XXIII.

That the Court was guilty of misconduct in stating during the closing argument of the United States Attorney with reference to the remark in assignment No. XXII, "I think there has been unusual aggravation of Mr. O'Hannesian and he naturally yielded to it, but I hope he will be permitted to continue with his argument and I hope he will not permit himself to be aggravated by these unnecessary and irritating interruptions in making some extravagant remarks hereafter."

XXIV.

That the Court erred in instructing that the proof offered by the Government, if uncontradicted and unexplained, would justify a conviction of all of the defendants.

XXV.

That the Court erred in instructing the jury that the jury would be warranted from the evidence in concluding that Quirin permitted water to be taken from his premises knowing that it was to be used in a still.

Upon the foregoing amended assignment of errors and upon the record in said cause the said defendants pray that the verdict and judgment rendered therein may be reversed.

Dated this 7th day of May, 1930.

C. L. Belt

Mark L. Herron

Russell Graham

Attorney for defendants,

Connley and Quirin

[Endorsed]: Original. No. 9926-M. In the United States District Court, Southern District of California, Central Division. United States of America, plaintiff, vs. Peter Connley and Herman F. Quirin, defendants. Amended Assignment of Errors. Received copy of the within Amended Assignment of Errors this day of May, 1930. Emmett E. Doherty attorney for plaintiff. Filed May 7, 1930 R. S. Zimmerman, Clerk, by Edmund L. Smith, Deputy Clerk. C. L. Belt, Russell Graham, attorneys 650 South Spring Street, Los Angeles, Telephone Trinity 6311, and Mark L. Herron, attorneys for defendants.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

	)	No. 9926- M
	)	STIPULATION
UNITED STATES OF AMERICA,	)	RE CERTIFI-
	)	CATION OF
Plaintiff,	)	EXHIBITS
VS	)	TO UNITED
	)	STATES CIR-
PETER CONNLEY and HERMAN	)	CUIT COURT
F. QUIRIN,	)	OF APPEALS
Defendants.	)	FOR THE
	)	NINTH
	)	CIRCUIT

IT IS HEREBY STIPULATED by and between counsel for the respective parties in the above entitled cause that each and every original exhibits in said cause may be by the Clerk of the United States District Court in and for the southern district of California; central division, sent to the United States Circuit Court of Appeals for the Ninth Circuit under a proper certificate from said Clerk in lieu of sending copies of such exhibits, excepting only that Exhibits Nos. 15 and 22 being heavy and cumbersome articles so large that it is impracticable to transport the same shall not be sent to the said Circuit Court of Appeals by the said Clerk of the United States District Court, but that photographs of the said above exhibits shall be taken under the direction of counsel for the respective parties and sent in lieu of said original exhibits.

IT IS HEREBY STIPULATED by and between counsel for the respective parties in the above entitled cause that said photographs of said original exhibits may be deemed to be and treated for all purposes as would the original exhibits were the same forwarded to the Honorable United States Circuit Court of Appeals.

Dated this day of April, 1930.

SAMUEL W. McNABB, UNITED STATES
ATTORNEY,

By J. Geo. Ohannesian

Attorneys for Plaintiff

RUSSELL GRAHAM, C. L. BELT and
MARK L. HERRON,

By Russell Graham

Attorneys for Defendants

[Endorsed]: No. 9926-M. In the United States District Court, Southern District of California, Central Division. United States of America, plaintiff, vs. Peter Connley, et al, defendants. Stipulation re certification of exhibits. Filed Apr. 29, 1930. R. S. Zimmerman, Clerk, by W. E. Gridley, Deputy Clerk. Russell Graham, Attorney 650 South Spring Street, Los Angeles, Telephone Trinity 6311. Attorneys for defendants.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

	)	No. 9926-M
	)	ORDER RE
UNITED STATES OF AMERICA,	)	CERTIFICA-
	)	TION OF
Plaintiff,	)	EXHIBITS TO
VS	)	UNITED
	)	STATES CIR-
PETER CONNLEY and	)	CUIT COURT
HERMAN F. QUIRIN,	)	OF APPEALS
	)	FOR THE
Defendants.	)	NINTH
	)	CIRCUIT

Good cause appearing therefor,

IT IS HEREBY ORDERED that each and every original exhibits in the above entitled cause may be by the Clerk of the above entitled Court sent to the United States Circuit Court of Appeals for the Ninth Circuit under a proper certificate from said Clerk in lieu of sending copies of such exhibits, excepting only that Exhibits Nos. 15 and 22 being heavy and cumbersome articles so large that it is impracticable to transport the same shall not be sent to the said Circuit Court of Appeals by the said Clerk, but that photographs of the said above numbered exhibits shall be taken under the direction of counsel for the respective parties and sent in lieu of said original exhibits.

Dated this 29 day of April, 1930.

Wm P. James
JUDGE

[Endorsed]: No. 9926-M. In the United States District Court, Southern District of California, Central Division. United States of America, plaintiff, vs. Peter Connley, et al, defendants. Order re certification of exhibits. Filed Apr. 29, 1930. R. S. Zimmerman, Clerk by W. E. Gridley, Deputy Clerk. Russell Graham, Attorney, 650 South Spring Street Los Angeles, Telephone Trinity 6311, Attorneys for defendants.

MEMORANDUM OF COSTS AND DISBURSEMENTS

DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	}	9926-M
Plaintiff,		
vs.		
NICK BRUNO, et al.,		
Defendant.		

DISBURSEMENTS

1. Marshall's Fees include Items 5, 6 and 7.....\$	20.00	
2. Clerk's Fees (to be inserted by clerk)	35.00	
3. Witness' Fees	323.50	
4. Jury Costs	349.40	
5. Service of Government witnesses	8.50	
6. Expense of serving witnesses	7.92	
7. Cost of taking jury and court to view premises	70.00	
8. Transcript	147.90	
9. Docket Fees	20.00	
	947.22	947.22
	taxed	

UNITED STATES OF AMERICA
 Southern District of
 California
 City of Los Angeles

} SS:

Emmett E. Doherty, being duly sworn, deposes and says: That he is one of the Attorneys for the Plaintiff in the above-entitled cause, and as such is better informed, relative to the above costs and disbursements, than the said Plaintiff. That the items in the above Memorandum contained are correct, to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

E E Doherty

[Seal]

Subscribed and sworn to before me, this
 9th day of April, A. D. 1930

R. S. Zimmerman, Clerk U. S. District Court
 Southern District of California
 By Edmund L. Smith, Deputy

To C. L. Belt, Attorney at Law, 404 American Bank
 Bldg., 129 W. 2nd St., Los Angeles.

You will please take notice that on Friday the 11th day of April, A. D. 1930, at the hour of 10 o'clock, A. M., Plaintiff will apply to the Clerk of said Court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

Emmett E. Doherty
 Emmett E. Doherty,
 Attorney for Plaintiff.

Service of within memorandum of costs and disbursements, and receipt of a copy thereof acknowledged this 9 day of April, A. D. 1930.

C. L. Belt
Attorney for Defendants.

[Endorsed]: No. 9926-M United States District Court Southern District of California United States of America, Plaintiff, vs. Nick Bruno, et al, Defendant. Memorandum of Costs and Disbursements Filed Apr. 9, 1930 R. S. Zimmerman, Clerk by Edmund L. Smith Deputy Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

UNITED STATES OF AMERICA,	)	No. 9926-M
Plaintiff and)	
Appellee,)	
vs.	)	BOND OF
PETER CONNLEY and	)	PETER CONN-
HERMAN F. QUIRIN,	)	LEY FOR
Defendants and	)	COSTS ON
Appelants.	)	APPEAL

UNITED STATES OF AMERICA,)
SOUTHERN DISTRICT OF CALIFORNIA) SS.

KNOW ALL MEN BY THESE PRESENTS:

That we, Peter Connley, as principal, and Fidelity and Deposit Company of Maryland, a Corporation, as sureties are held and firmly bound unto the United States of America, in the sum of Two Hundred Fifty (\$250.00) Dollars, to the payment of which well and truly to be made we jointly and severally bind ourselves,

our executors, administrators and successors, firmly by these presents.

WITNESS our hands and seals at Los Angeles, California, this 8th day of April, 1930.

WHEREAS, on the 2nd day of April, 1930, in the District Court of the United States for the Southern District of California, Central Division, an order was entered denying the defendant's motion for a new trial, and on said date sentence was pronounced on the said Peter Connley, and on the 4th day of April, 1930, a citation was issued, directed to the United States of America, to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, pursuant to the terms and the date fixed in the said citation;

NOW, THEREFORE, the condition of the above obligation is such that if the said Peter Connley shall prosecute said appeal and answer all damages for costs if he fail to make good his plea, then the above obligation shall be null and void; otherwise to remain in full force and effect.

Peter Connley

Principal

Fidelity and Deposit Company of Maryland

By W. M. Walker

Attorney-in-Fact

Theresa Fitzgibbons

Agent

Sureties

We, the undersigned, attorneys for the said Peter Connley, hereby certify that in our opinion the form of the foregoing bond is correct, and that the sureties thereon are qualified.

C. L. Belt

Mark L. Herron &

Russell Graham

By Russell Graham

Attorneys for Appellant Peter Connley.

The foregoing bond is hereby approved as to form.

SAMUEL W. McNABB,

United States Attorney

By E. E. Doherty

Assistant United States Attorney.

The foregoing bond is hereby approved.

John M. Killits

U. S. District Judge.

STATE OF CALIFORNIA }
County of Los Angeles } ss.

On this 8th day of April, 1930, before me Elsie E. Armstrong, a Notary Public, in and for the County and State aforesaid, duly commissioned and sworn, personally appeared W. M. Walker and Theresa Fitzgibbons known to me to be the persons whose names are subscribed to the foregoing instrument as the Attorney in-Fact and Agent respectively of the Fidelity and Deposit Company of Maryland, and acknowledged to me that they subscribed the name of Fidelity and Deposit Company of

Maryland thereto as Principal and their own names as Attorney-in-Fact and Agent, respectively.

[Seal]

Elsie E. Armstrong

Notary Public in and for the State of California, County of Los Angeles.

[Endorsed]: 9926-M United States of America vs. Peter Connley and Herman F. Quirin, Cost on Appeal Fidelity and Deposit Company of Maryland Baltimore F D Fidelity and Surety Bonds Burglary and Plate Glass Insurance Filed Apr 10 1930 R. S. Zimmerman, Clerk By W. E. Gridley Deputy Clerk Department of Southern California Bank of America Building 650 S. Spring St. Los Angeles, Calif.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

UNITED STATES OF AMERICA,	)	No. 9926-M
Plaintiff and)	
Appellee,)	
vs.	)	BOND OF
PETER CONNLEY and	)	HERMAN F.
HERMAN F. QUIRIN,	)	QUIRIN FOR
Defendants and	)	COSTS ON
Appelants.	)	APPEAL

UNITED STATES OF AMERICA,)
SOUTHERN DISTRICT OF CALIFORNIA.) SS.

KNOW ALL MEN BY THESE PRESENTS:

That we, Herman F. Quirin, as principal, and Fidelity and Deposit Company of Maryland as sureties are held and firmly bound unto the United States of America,

in the sum of Two Hundred Fifty (\$250.00) Dollars, to the payment of which well and truly to be made we jointly and severally bind ourselves, our executors, administrators and successors, firmly by these presents.

WITNESS our hands and seals at Los Angeles, California, this 8th day of April, 1930.

WHEREAS, on the 2nd day of April, 1930, in the District Court of the United States for the Southern District of California, Central Division, an order was entered denying the defendant's motion for a new trial, and on said date sentence was pronounced on the said Herman F. Quirin, and on the 4th day of April, 1930, a citation was issued, directed to the United States of America, to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, pursuant to the terms and the date fixed in the said citation;

NOW, THEREFORE, the condition of the above obligation is such that if the said Herman F. Quirin shall prosecute said appeal and answer all damages for costs if he fail to make good his plea, then the above obligation shall be null and void; otherwise to remain in full force and effect.

Herman F. Quirin

Principal

Fidelity and Deposit Company
of Maryland

By W. M. Walker

Attorney-in-Fact

Theresa Fitzgibbons

Agent

Sureties

We, the undersigned, attorneys for the said Herman F. Quirin, hereby certify that in our opinion the form of the foregoing bond is correct, and that the sureties thereon are qualified.

C. L. Belt,
Mark L. Herron and
Russell Graham

By Russell Graham
Attorneys for Appellant Herman F. Quirin.

The foregoing bond is hereby approved as to form.

SAMUEL W. McNABB,
United States Attorney

By E. E. Doherty
Assistant United States Attorney.

The foregoing bond is hereby approved.

John M. Killits
U. S. District Judge.

STATE OF CALIFORNIA }
County of Los Angeles } ss.

On this 8th day of April, 1930, before me Elsie E. Armstrong, a Notary Public, in and for the County and State aforesaid, duly commissioned and sworn, personally appeared W. M. Walker and Theresa Fitzgibbons known to me to be the persons whose names are subscribed to the foregoing instrument as the Attorney-in-Fact and Agent respectively of the Fidelity and Deposit Company of Maryland, and acknowledged to me that they subscribed the name of Fidelity and Deposit

for the payment of which said sum we and each of us bind ourselves, our heirs, executors, administrators and assigns.

Signed and dated this 21st day of May, A. D. 1930.

WHEREAS, lately, to-wit: on or about the 27th day of March, A. D. 1930, at a term of the District Court of the United States, in and for the Southern District of California, Central Division, in an action pending in said Court, between the United States of America, Plaintiff, and PETER CONNLEY, defendant, a judgment and sentence was made, given rendered and entered against the said PETER CONNLEY in the above entitled action, wherein he was convicted on Counts No's. 1, 2, 3, 4 and 5 of said indictment to violate Section 37 of the Federal Penal Code, Conspiracy to Violate Section 3, Title 2, National Prohibition Act and Sections 3258, 3282 and 3281 United States Revised Statute, and Section 3, Title 2, National Prohibition Act.

WHEREAS, in said judgment and sentence, so made, given, rendered and entered against said PETER CONNLEY, he was by said judgment sentenced to six (6) years and six (6) months in the Federal Penitentiary at McNeils Island, and to pay a fine aggregating \$4,000.00. (Four Thousand & no/100 Dollars).

The said PETER CONNLEY, having obtained an appeal from the United States Circuit Court of Appeals for the Ninth Circuit to reverse said judgment and sentence, and a citation directed to the United States of America to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, in pursuance to the terms and at the time fixed in said citation.

WHEREAS, the said PETER CONNLEY has been admitted to bail pending the decision upon said appeal, in the sum of Twelve Thousand & no/100 (\$12,000.00)

NOW, THEREFORE, the conditions of the above obligations are such that if the said PETER CONNLEY shall appear in person or by his attorney, in the United States Circuit Court of Appeals for the Ninth Circuit, on such day or days as may be appointed for the hearing of said cause in the said Court, and prosecute his appeal; and if the said PETER CONNLEY shall abide and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit, in said Cause; and if the said PETER CONNLEY shall surrender himself in execution of said judgment and sentence if the said judgment and sentence be affirmed by the United States Circuit Court of Appeals for the Ninth Circuit; and if the said PETER CONNLEY SHALL APPEAR for trial in the District Court of the United States in and for the Southern District of California, Central Division, on such day or days as may be appointed for retrial by said District Court, and abide by and obey all orders made by said District Court, if the said judgment and sentence against him be reversed by the United States Circuit Court of Appeals for the Ninth Circuit.

THEN THIS OBLIGATION TO BE void; otherwise to remain in full force, virtue and effect.

Peter F. Connolly 353 S. Cloverdale

Principal

PACIFIC INDEMNITY COMPANY

By F. L. Hemming

[Seal]

Attorney-in-Fact SURETY

I hereby certify that I have examined the foregoing bond and that, in my opinion, the form thereof is proper and that the surety is qualified.

Russell Graham

Of Counsel for Appellant.

STATE OF CALIFORNIA,

ss.

County of LOS ANGELES

On this 21st day of May in the year one thousand nine-hundred and 30 before me, Chas. Malley a Notary Public in and for said County and State, residing therein, duly commissioned and sworn personally appeared F. L. Hemming known to me to be the duly authorized Attorney-in-Fact of PACIFIC INDEMNITY COMPANY, and the same person whose name is subscribed to the within instrument as the Attorney-in-Fact of said Company, and the said F. L. Hemming acknowledged to me that he subscribed the name of PACIFIC INDEMNITY COMPANY, thereto as principal, and his own name as Attorney-in-Fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal]

Chas. Malley

Notary Public in and for Los Angeles County, State of California

My Commission Expires Oct. 31, 1932.

[Endorsed]: 9926-M Cr. Bond Approved because of ruling of Circuit Court of Appeals Paul J. McCormick United States District Judge Filed May 21 1930 R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk.

UNITED STATES OF AMERICA,	)	No. 9926-M
)	
Plaintiff	)	BOND
vs	)	PENDING
	)	DECISION
HERMAN QUIRIN	)	UPON
Defendant	)	APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That we, HERMAN QUIRIN, of the City of Los Angeles, State of California, as principal, and the PACIFIC INDEMNITY COMPANY, a California Corporation, with its principal office and place of business in Los Angeles, County of Los Angeles, State of California, as surety, are jointly and severally held and firmly bound unto the UNITED STATES OF AMERICA, in the sum of Six Thousand & no/100 (\$6,000.00) Dollars for the payment of which said sum we and each of us bind ourselves, our heirs, executors, administrators and assigns.

Signed and dated this 21st day of May, A. D. 1930.

WHEREAS, lately, to-wit: on or about the 27th day of March, A. D. 1930, at a term of the District Court of the United States, in and for the Southern District of California, Central Division, in an action pending in said Court, between the United States of America, Plaintiff, and HERMAN QUIRIN, defendant, a judgment and sentence was made, given, rendered and entered against the said HERMAN QUIRIN in the above entitled action, wherein he was convicted on Count 1 of said indictment to violate Section 37 of the Federal Penal Code, Conspiracy to Violate Section 3, Title 2, National Prohibition Act and Sections 3258, 3282 and 3281 United States

Revised Statute, and Section 3, Title 2, National Prohibition Act.

WHEREAS, in said judgment and sentence, so made, given, rendered and entered against said HERMAN QUIRIN, he was by said judgment sentenced to Twenty-One (21) months in the Federal Penitentiary at McNeils Island, and to pay a fine aggregating One Thousand (\$1,000.00) dollars.

The said HERMAN QUIRIN, having obtained an appeal from the United States Circuit Court of Appeals for the Ninth Circuit to reverse said judgment and sentence, and a citation directed to the United States of America to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, in pursuance to the terms and at the time fixed in said citation.

WHEREAS, the said HERMAN QUIRIN has been admitted to bail pending the decision upon said appeal, in the sum of Six Thousand & no/100 (\$6,000.00) Dollars.

NOW, THEREFORE, the conditions of the above obligations are such that if the said HERMAN QUIRIN shall appear in person or by his attorney, in the United States Circuit Court of Appeals for the Ninth Circuit, on such day or days as may be appointed for the hearing of said cause in the said Court, and prosecute his appeal; and if the said HERMAN QUIRIN shall abide and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit, in said Cause; and if the said HERMAN QUIRIN shall surrender himself in execution of said judgment and sentence if the said judgment and sentence be affirmed by the United States Circuit Court of Appeals for the Ninth Circuit: and if the

said HERMAN QUIRIN shall appear for trial in the District Court of the United States in and for the Southern District of California, Central Division, on such day or days as may be appointed for retrial by said District Court, and abide by and obey all orders made by said District Court, if the said judgment and sentence against him be reversed by the United States Circuit Court of Appeals for the Ninth Circuit.

THEN THIS OBLIGATION TO BE VOID; otherwise to remain in full force, virtue and effect.

Herman Quirin, 706 East 90th

Principal

PACIFIC INDEMNITY COMPANY

By F. L. Hemming

[Seal]

Attorney-in-Fact

I hereby certify that I have examined the foregoing bond and that, in my opinion, the form thereof is sufficient, and that the surety is qualified.

Russell Graham

Of Counsel for Appellant.

STATE OF CALIFORNIA

ss.

County of LOS ANGELES

On this 21st day of May in the year one thousand nine-hundred and 30, before me, Chas. Malley a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared F. L. Hemming known to me to be the duly authorized Attorney-in-Fact of PACIFIC INDEMNITY COMPANY, and the same person whose name is subscribed to the

within instrument as the Attorney-in-Fact of said Company, and the said F. L. Hemming acknowledged to me that he subscribed the name of PACIFIC INDEMNITY COMPANY, thereto as principal, and his own name as Attorney-in-Fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal]

Chas. Malley

Notary Public in and for Los Angeles County, State of California

My Commission Expires Oct. 31, 1932.

[Endorsed]: 9926-M Cr. Bond approved because of ruling of Circuit Court of Appeals Paul J. McCormick United States District Judge Filed May 21 1930 R. S. Zimmerman, Clerk, By Edmund L. Smith, Deputy Clerk.

Praecipe

District Court of the United States
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, VS PETER CONNLEY and HERMAN F. QUIRIN, Defendants.	}	Clerk's Office No. 9926-M Crim.
Plaintiff,		

To the Clerk of Said Court:

Sir:

Please prepare transcript of record to the Circuit Court of Appeals in the above entitled cause, and include therein the following papers and orders:

- (1) Indictment
- (2) Pleas
- (3) Verdicts
- (4) Minutes of trial
- (5) Bill of Exceptions and Order approving same
- (6) Petition for appeal
- (7) Order allowing appeal and fixing bond
- (8) Citation
- (9) Stipulation re certification of exhibits to Circuit Court of Appeals
- (10) Stipulation and Order extending time for filing transcript on appeal and docketing appeal
- (11) Cost bonds on appeal
- (12) Bail bonds on appeal
- (13) Assignment of errors
- (14) Judgments and Sentences
- (15) Praeceptum for record
- (16) Order of court re certification of original exhibits to Circuit Court of Appeals
- (17) Memorandum of Costs and Disbursements
- (18) Amended Assignment of Errors.

C. L. Belt

Mark L. Herron

Russell Graham

Attorneys for Appellants.

[Endorsed]: No. 9926-M United States District Court Southern District of California United States of America, plaintiff vs Peter Connley and Herman F. Quirin, Defendants. Praeceptum for Record—S. W. McNabb—J. Geo. Ohannesian Filed May 7, 1930 R. S. Zimmerman Clerk. By Edmund L. Smith, Deputy Clerk. Russell Graham, C. L. Belt, and Mark L. Herron, 650 South Spring St., Los Angeles, California. Attorneys for Defts.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

UNITED STATES OF AMERICA,)
	Plaintiff,)
vs.)
)
PETER CONNLEY and)
HERMAN F. QUIRIN,)
	Defendants.)

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 295 pages, numbered from 1 to 295 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; indictment; minutes of the court; verdict of the jury; sentence; bill of exceptions; petition for appeal; order allowing appeal; assignment of errors; amended assignment of errors; stipulation re exhibits; order re exhibits; memorandum of costs; bond of Peter Connley for costs; bond of Herman F. Quirin for costs; bonds pending decision on appeal and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to.....and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of May, in the year of Our Lord One Thousand Nine Hundred and Thirty, and of our Independence the One Hundred and Fifty-fourth.

R. S. ZIMMERMAN,
Clerk of the District Court of the
United States of America, in and
for the Southern District of
California.

By

Deputy.

